



# City of Cincinnati

801 Plum Street  
Cincinnati, OH 45202

## Agenda - Final-revised

### Budget and Finance Committee

*Chairperson Reggie Harris*  
*Vice Chair Jeff Cramerding*  
*Councilmember Mark Jeffreys*  
*Councilmember Scotty Johnson*  
*Vice Mayor Jan-Michele Kearney*  
*Councilmember Liz Keating*  
*Councilmember Meeka Owens*  
*Councilmember Seth Walsh*  
*President Pro Tem Victoria Parks*

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Monday, September 11, 2023

1:00 PM

Council Chambers, Room 300

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#### PRESENTATIONS

### Disparity Study Findings and Recommendations

Laura Castillo, Interim Director, Department of Economic Inclusion

Michele Clark Jenkins, Senior Director, Consulting Division, Griffin & Strong

#### AGENDA

#### REPORTS

1. [202301914](#) **REPORT**, dated 9/7/2023, submitted Sheryl M. M. Long, City Manager, regarding the Cincinnati Retirement System CY2022 Annual Report.  
**Sponsors:** City Manager  
**Attachments:** [Transmittal Report](#)

#### COMMUNITY REINVESTMENT AREA AGREEMENTS

2. [202301964](#) **ORDINANCE (EMERGENCY)** submitted by Sheryl M. M. Long, City Manager, on 9/7/2023, **APPROVING AND AUTHORIZING** the City Manager to execute a Community Reinvestment Area Tax Exemption Agreement with So Much Better, LLC, thereby authorizing an eight-year tax exemption for 100 percent of the value of improvements made to real property located at 635 Main Street in the Central Business District of Cincinnati, in connection with the remodeling of an existing building into approximately 1,920 square feet of commercial space and 1,720 square feet of office space, at a total construction cost of approximately \$557,501.

**Sponsors:** City Manager

**Attachments:** [Transmittal](#)  
[Ordinance](#)  
[Attachment](#)

### **FUND AMENDMENT**

3. [202301950](#) **ORDINANCE (EMERGENCY)** submitted by Sheryl M. M. Long, City Manager, on 9/7/2023, **AMENDING** Ordinance No. 132-2018, which established Fund No. 437, "Wasson Way Trail Donations," to change the name of the fund to "City Trails," and to expand the purpose of the fund to enable the City to receive and expend funds, including but not limited to grants, donations, settlements, fees, lease payments, and other sources of funding, in support of the maintenance, projects, and needs of the entire City trail network.

**Sponsors:** City Manager

**Attachments:** [Transmittal](#)  
[Ordinance](#)

### **ALLOCATIONS AND DONATIONS**

4. [202301961](#) **ORDINANCE (EMERGENCY)** submitted by Sheryl M. M. Long, City Manager, on 9/7/2023, **ESTABLISHING** new capital improvement program project account no. 980x233x242367, "Maintenance Fund for Bridges 2022-2026," for the purpose of maintaining and repairing Hamilton County-owned bridges and viaducts located within the City; **AUTHORIZING** the City Manager to accept and appropriate annual Municipal Road Fund allocations of up to \$1,000,000 from the Board of Hamilton County Commissioners, totaling up to \$5,000,000 for program years 2022 through 2026 (the "2022-2026 MRF Allocations"), in accordance with the bridge maintenance agreement entered into between the City and Hamilton County; and **AUTHORIZING** the Finance Director to deposit the 2022-2026 MRF Allocations into capital improvement program project account no. 980x233x242367, "Maintenance Road Fund for Bridges 2022-2026."

**Sponsors:** City Manager

**Attachments:** [Transmittal](#)  
[Ordinance](#)

5. [202301962](#) **ORDINANCE** submitted by Sheryl M. M. Long, City Manager, on 9/7/2023, **AUTHORIZING** the City Manager to accept a donation of up to \$338,400 from the Cincinnati Park Board Commissioners' Fund to fund various activities set forth herein; **AUTHORIZING** the Director of Finance to deposit the donated funds into Parks Private Endowment and Donations Fund 430; **AUTHORIZING** the transfer and appropriation of \$220,000 from Parks Private Endowment and Donations Fund 430 to existing capital improvement program project account no. 980x203x182015, "Lytle Park Improvements," to renovate the comfort

station, update and augment the lighting along 4th Street, and enact a safety bump out in the curb that will improve pedestrian safety and accessibility to the improved corridor at Lytle Park; **AUTHORIZING** the transfer and appropriation of \$73,850 from Parks Private Endowment and Donations Fund 430 to existing capital improvement program project account no. 980x203x222011, "Smale Riverfront Park Water Feature Repairs," to restore the Pichler Fountain recirculation tank; **AUTHORIZING** the transfer and appropriation of \$44,550 from Parks Private Endowment and Donations Fund 430 to existing capital improvement program project account no. 980x203x232035, "Burnet Woods Dog Park," for the development of the Burnet Woods Dog Park; and **AUTHORIZING** the transfer and appropriation of \$180,000 from the unappropriated surplus of Cincinnati Riverfront Park Fund 329 to existing capital improvement program project account no. 980x203x222011, "Smale Riverfront Park Water Feature Repairs," to restore the Pichler Fountain recirculation tank.

**Sponsors:** City Manager

**Attachments:** [Transmittal](#)  
[Ordinance](#)

### **MISCELLANEOUS**

6. [202301955](#) **ORDINANCE** submitted by Sheryl M. M. Long, City Manager, on 9/7/2023, **AUTHORIZING** the expenditure of funds for purchasing inexpensive paper products, such as paper plates and bowls, disposable cups, paper towels, tissues, napkins, and cutlery, and cleaning supplies such as dish soap, dish sponges, and sanitizer for use by City employees while at work at City facilities; **AUTHORIZING** the City Manager to establish rules and regulations specifying the circumstances in which the City may expend funds for such purposes, as well as controls to ensure the appropriate expenditure of such funds; and further **DECLARING** that such expenditures serve a public purpose.

**Sponsors:** City Manager

**Attachments:** [Transmittal](#)  
[Ordinance](#)

### **MUNICIPAL CODE CHANGES**

7. [202301980](#) **ORDINANCE (EMERGENCY)** submitted by Sheryl M. M. Long, City Manager, on 9/7/2023, **REPEALING** existing Chapter 324, "Minority and Women Business Enterprise Program," of the Cincinnati Municipal Code, and **ORDAINING** in its place new Chapter 324, "Minority and Women Business Enterprise Program."

**Sponsors:** City Manager

**Attachments:**    [Transmittal](#)  
                              [Ordinance](#)

8.    **202301987**    **PRESENTATION**, submitted by Sheryl M. M. Long, City Manager, dated 9/11/2023, regarding the Findings and Recommendations for the Disparity Study.

**Sponsors:**        City Manager

**Attachments:**     Presentation

ADJOURNMENT

September 7, 2023

**To:** Mayor and Members of City Council

202301914

**From:** Sheryl M. M. Long, City Manager

**Subject:** **Cincinnati Retirement System CY2022 Annual Report**

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Attached is the Cincinnati Retirement System's CY2022 Annual Report provided by the Cincinnati Retirement System Board of Trustees.

cc: William "Billy" Weber, Assistant City Manager  
Jon Salstrom, Executive Director

September 7, 2023

To: Mayor and Members of City Council  
From: Cincinnati Retirement System Board of Trustees  
Copy: Sheryl M. M. Long, City Manager  
Subject: Cincinnati Retirement System CY2022 Annual Report

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This report is from the Cincinnati Retirement System (CRS) Board of Trustees (Board) and provides the City Council with the state of the CRS Pension Trust and Healthcare Trust. This summary report, together with the CRS Financial Report, is intended to provide a comprehensive summary of the status of the Cincinnati Retirement System, in compliance with the CRS Board's reporting requirements as set out in the City's Administrative Code and Board Rules. The report is as of December 31, 2022. For additional information, please see the City's Annual Comprehensive Financial Report, Actuarial Valuations, and Investment Results on the CRS website.

The CRS is governed by the Collaborative Settlement Agreement (CSA). Under the CSA, the CRS Pension Trust is to be 100% funded by 2045. Under the CSA, the Healthcare Trust is to be 100% funded through 2045.

Given the current and projected funding positions of the Pension Trust, we recommend that the City Council continue to take action to increase the funding of the Pension Trust. In addition, we recommend that the City Manager continue to work with class counsel to finalize a funding policy for the Healthcare Trust. The City's municipal code requires that the City obtain input and recommendations from the CRS Board for the funding policy.

## **Background**

The purposes of the CRS Pension Trust and Healthcare Trust are to provide promised retirement benefits and healthcare benefits to eligible retired city employees. CRS is a defined benefit plan that was established in 1931. The Collaborative Settlement Agreement (CSA) was approved in 2015 to settle litigation and provide a comprehensive strategy to stabilize CRS while securing sustainable and competitive retirement benefits for both current and future retirees.

As of December 31, 2022, there were 2,875 full-time active members (which includes 157 members in the DROP plan who are still working), 4,148 pensioners receiving pension payments, and 4,762 pensioners and spouses receiving healthcare benefits. The CRS Board serves as an independent fiduciary on behalf of active and retired members of the retirement system. The Board retains Marquette Associates, an independent investment consulting firm, and Cheiron, a pension and healthcare actuarial consulting firm, both of which specialize in public sector retirement plans. Marquette and the Board have developed and follow a disciplined investment policy that can be found on the CRS website. Cheiron calculates the actuarial value of assets and liabilities and

projects the funded status of the Trusts in future years based on professional actuarial standards and practices.

The assumed investment rate of return and discount rate for calculating liabilities is 7.5% per year as prescribed in the CSA. The annualized capital market rates of return for the past 5 and 10 years as of December 31, 2022, were 5.43% and 7.32%, respectively. CRS investment performance is at or above the median of peer public defined benefit retirement plans.

The table below highlights the actuarial value of assets, liabilities, and funded ratios as of 12/31/22:

	Assets	Liabilities	Funded Ratio
<b>Pension</b>			
Actuarial Value	\$ 1,811,291,262	\$ 2,614,702,553	69.3%
Market Value	\$ 1,703,876,000	\$ 2,614,702,553	65.2%
<b>Health</b>			
Actuarial Value	\$ 532,169,108	\$ 363,450,123	146.4%
Market Value	\$ 500,041,000	\$ 363,450,123	137.6%

### Pension Trust

A goal of the CSA is to establish a projected 100% funding ratio in 30 years (i.e., by 12/31/2045). The assumptions used in finalizing the CSA projected that the Pension Trust would be fully funded in 30 years if all of the assumptions played out exactly. The status of the annual contributions and distributions is described below:

- The active employees contribute 9% of covered payroll to the Pension Trust as required by the CSA.
- The City contributes the minimum rate per the CSA of 16.25% of full-time covered payroll to the Pension Trust. (The General Fund represents 35% of covered payroll and other non-general funds represent 65% of covered payroll.)
- In CY2022, the City contributed a payment of \$2.76 million as result of the continued payments toward the cost of the 2020 Early Retirement Incentive Plan (ERIP). There are now 13 annual payments remaining. Cheiron estimates that payment at 1.33% of payroll for this additional benefit, bringing the City’s contribution rate for CY2022 to 17.58%.
- In CY2022, the City also contributed a lump sum payment of \$2.0 million dollars from the General Fund fiscal year-end surplus. Cheiron estimates that payment at 0.96% of payroll for this additional benefit, bringing the City’s contribution rate for CY2022 to 18.54%.
- The Actuarially Determined Contribution (ADC) for the Pension Trust, as calculated by the actuary, is the annual employer contribution amount required to bring the Pension to a fully funded status in 30 years. **The ADC for FY2022 was 33.46% of covered payroll (as set by the CY2021 actuarial valuation). The actual contribution of 18.54% means the City contributed 55.4% of the actuarial recommendation.**
- Benefit payments and expenses have significantly exceeded employer and employee contributions for over a decade placing CRS in the bottom quartile among other public pension funds with negative cashflows. This means that CRS continues to liquidate a relatively large amount of assets to pay for benefits and expenses. This also means that CRS is much more dependent on investment returns than most public pension plans.

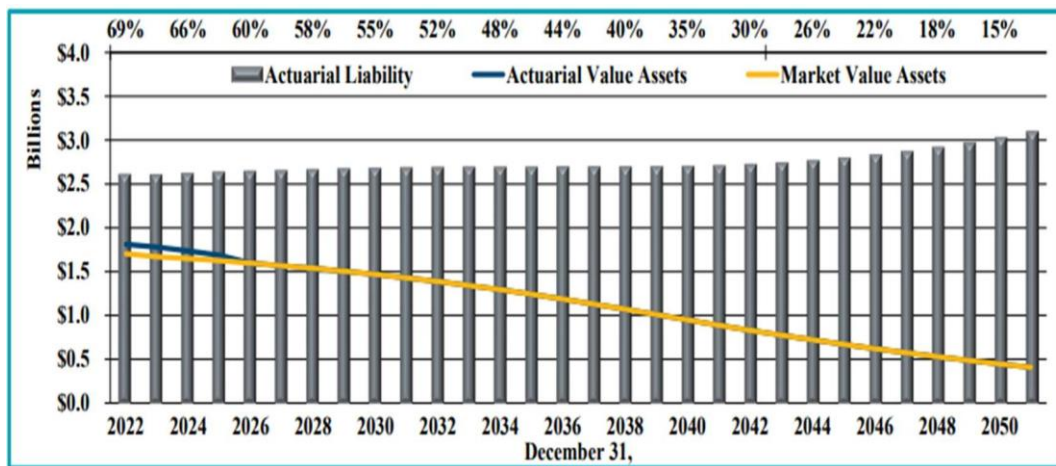
The following events occurred after the CSA was finalized:

- Ordinance 336, which reflects changes made in finalizing the CSA that increased liabilities, was approved by City Council in 2016.
- Revisions to actuarial assumptions (e.g., longer life span of retirees) occurred as recommended by the actuary and approved by the CRS Board.
- Annualized 5-year investment returns (2018 – 2022) were 5.43% as of December 31, 2022 vs. the assumed 7.5%. However, CRS is especially sensitive to the timing of capital market swings because it continues to liquidate assets to pay benefits when the capital market drops. This requires more time and a significantly higher rate of return for the remaining assets to recover from capital market volatility.
- The City offered the ERIP in 2020 that provided two (2) additional years of service to eligible participants resulting in earlier retirements, additional benefits, and an increase in liabilities.
- The Deferred Retirement Option Plan (DROP) established in the CSA is required to be cost neutral.

The actuary’s latest revised funding progress for the Pension Trust, which includes the impact of the DROP and the ERIP, projects the funded ratio on an Actuarial Value of Assets basis is projected to decrease over the next 30 years and will not reach 100% by 2045 in accordance with the CSA.

The graph below reflects the City’s minimum required contributions of 16.25% of covered payroll for 30 years. It also includes the recommended budget’s \$2.7 million contribution per year for the next 15 years to pay for the ERIP liabilities and assumes the CSA benchmark return of 7.5% investment return for all future years. The funding ratio declines precipitously over 30 years to near-insolvency.

### Pension Trust



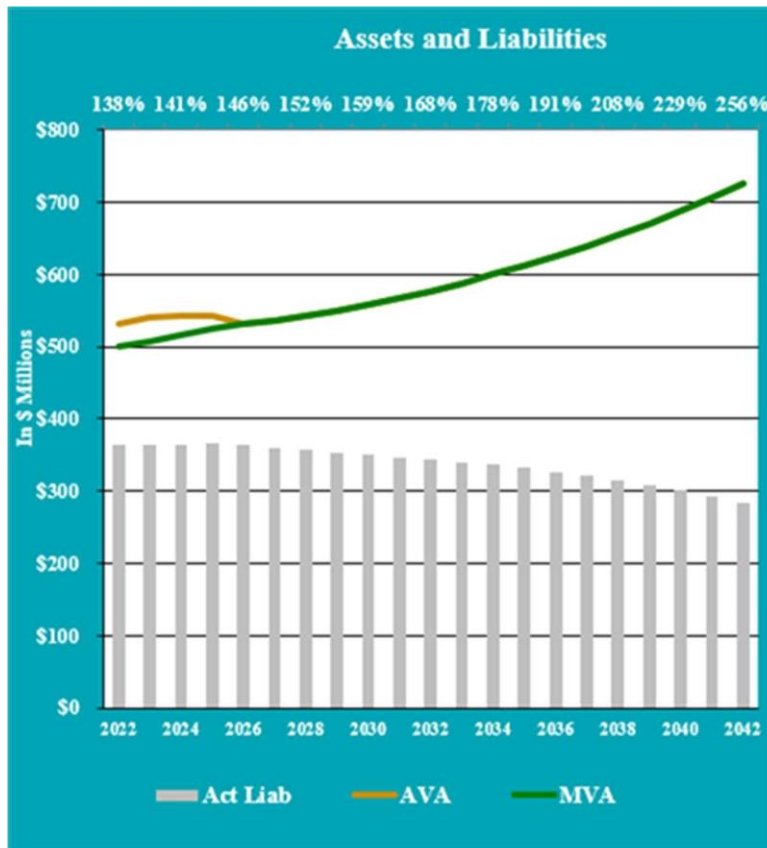


## Healthcare Trust

At the time of the CSA signing, the Healthcare Trust was fully funded, and the City was required per the CSA to develop and present a proper funding policy to fully fund the healthcare trust at actuarially appropriate levels. The funding policy would keep the Trust fully funded over the lifetimes of current and future retirees and their beneficiaries covered by the CSA. Implementation of a full funding policy will ensure that the Healthcare Trust remains fully funded to provide promised benefits. The Healthcare Trust is irrevocable, and its assets must be used exclusively for healthcare benefits for CRS retirees and their beneficiaries. The City has yet to adopt a Healthcare Trust funding policy as required by the CSA and there have been no City contributions to the Trust since the CSA was signed.

In the graph below, the bars represent liabilities, and the lines represent the actuarial value of assets (AVA) and the market value of assets (MVA) assets. The graph shows that the Healthcare Trust is fully funded in 2022 and beyond. This is based on current assumptions being fully met. A funding policy would safeguard the trust for retirees and their beneficiaries in the future should the assumptions not be achieved.

### Healthcare Trust



## Investment Performance

While the simple conclusion may be to achieve higher returns or “invest our way out of this,” CRS’ investment performance has been solid relative to what the capital markets have provided. The 7.5% annualized return assumption remains a high hurdle as well as optimistic given persistent capital market volatility and the outlook of many investment consultants. The median investment return assumption of U.S. public retirement systems has steadily decreased over the past several years and is currently 7.0%. CRS will be challenged to achieve the 7.5% rate of return with an acceptable level of risk going forward, especially given the high negative cash flow.

The following chart reflects the annual rates of return and 10-year compound return. CRS has achieved the 7.5% CSA assumption. The poor capital market performance in 2022 has resulted in a five-year compound return that is less than the 7.5% CSA assumption.

Annual CRS Rates of Investment Return		
Plan Year	Investment Return	
	Assumption	Market Return
2013	7.50%	16.99%
2014	7.50%	6.46%
2015	7.50%	-0.11%
2016	7.50%	9.24%
2017	7.50%	14.51%
2018	7.50%	-3.93%
2019	7.50%	16.40%
2020	7.50%	8.03%
2021	7.50%	18.06%
2022	7.50%	-8.68%
<b>10-Year compound Average</b>		<b>7.32%</b>
<b>5-Year Compound Average</b>		<b>5.43%</b>

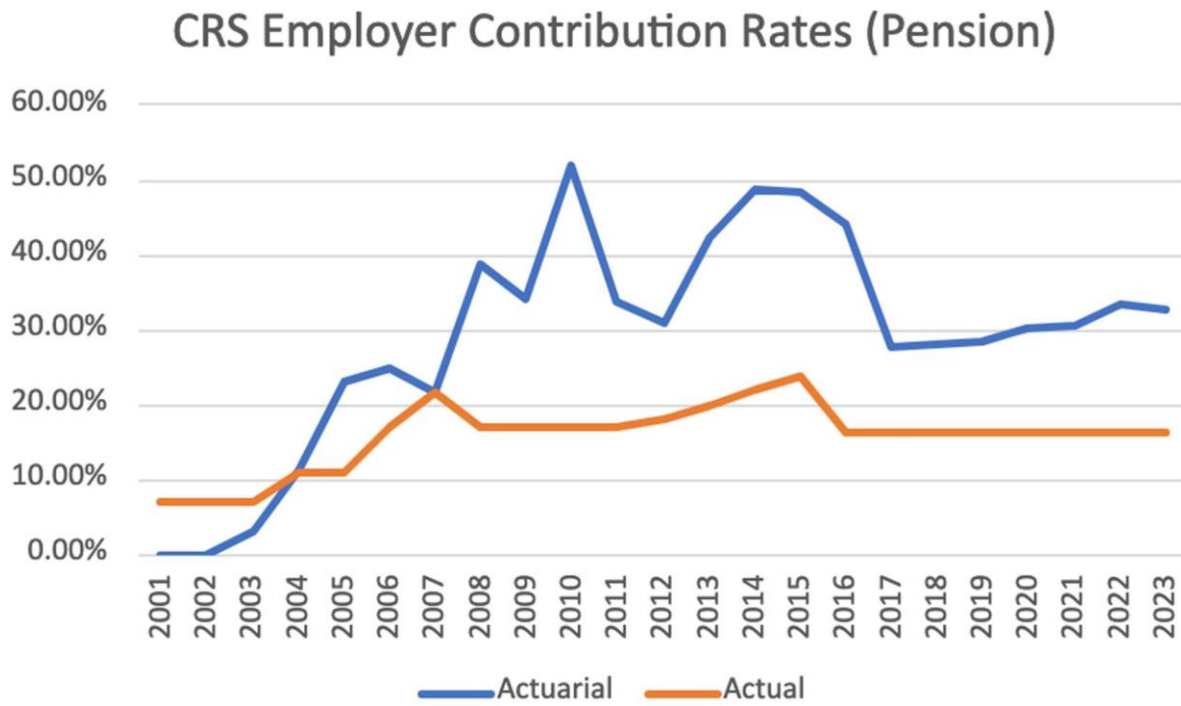
The Board’s Investment Policy provides for a well-diversified portfolio across asset class, sector, investment managers and securities. The chart below is designed to achieve the 7.5% return over time with an acceptable level of risk.

### CRS Asset Allocation

Fixed Income	25.5%
Domestic Equity	28.5%
Non-US Equity	18.0%
Real Estate	7.5%
Infrastructure	10.0%
Volatility Risk Prem	2.5%
Private Equity	8.0%
Total	100.0%

## Employer Contributions

In a defined benefit retirement plan such as CRS, the employer is responsible for providing benefits (as opposed to a defined contribution plan) and the employer generally accepts the financial risk. The Actuarially Determined Contribution (ADC) is the actuary recommended employer contribution to achieve full funding in 30 years. The chart below reflects the Pension Trust ADC and the City employer contribution for the last 20 years. By not contributing to the ADC the unfunded liability increases over time meaning that the actuarial liability exceeds the value of assets.



## Conclusion

The CRS Pension Trust and Healthcare Trust are undoubtedly challenged in providing promised retirement benefits. When the Collaborative Settlement Agreement was implemented, the Pension Trust and Healthcare Trust were projected to be fully funded in 30 years by 2045. For the Pension Trust this is no longer the case.

At the close of 2022, the Pension Trust experienced major capital market losses. The Actuarial Value of Assets decreased \$20.66 million from the prior year close, the annual investment return was a -8.68% and the funding ratio on an AVA bases dropped 2.3%. Funding vigilance therefore remains a priority for the Board. The future of the Health Care Trust is also uncertain due to the lack of a funding policy as required by the CSA.

The following are possible solutions:

- Continued increases to City contributions to the Pension Trust above the minimum required amount of 16.25%, as provided for in the CSA. The Board has formally recommended an increase in rates by 1.5% each year until the actuarial projections reflect anticipated full funding by 2045. The Board also recommends that the City adopt the multi-year incremental increase funding methodology to achieve full funding by 2045, update the methodology annually, and budget accordingly. The Board acknowledges and appreciates the 0.75% increase in the contribution rate and the use of variable General Fund carryover to reduce unfunded pension obligations. Nonetheless, a more stable and predictable path to full funding is necessary. Failure to increase the City's annual contribution rate will result in the CRS Pension Funded Ratio steadily decreasing until it reaches 28.5% in 2045; alternatively, incremental increases in the rate are required to achieve 100% funding by 2045 based on the most recent projection:

### Incremental Increase Plan

Schedule of Funded Ratios	Earnings Assumption = 7.5%			
	Flat E'r Rate of 17%		Increase E'r Rate by 1.5%	
	E'r Contr Rate	Funded Ratio	E'r Contr Rate	Funded Ratio
12/31/2022	16.25%	69.3%	16.25%	69.3%
12/31/2023	17.00%	68.2%	17.00%	68.2%
12/31/2024	17.00%	66.2%	17.00%	66.2%
12/31/2025	17.00%	64.1%	18.50%	64.2%
12/31/2026	17.00%	60.5%	20.00%	60.8%
12/31/2027	17.00%	59.3%	21.50%	60.0%
12/31/2028	17.00%	58.1%	23.00%	59.4%
12/31/2029	17.00%	56.8%	24.50%	58.9%
12/31/2030	17.00%	55.4%	26.00%	58.6%
12/31/2031	17.00%	54.0%	27.50%	58.5%
12/31/2032	17.00%	52.5%	29.00%	58.6%
12/31/2033	17.00%	50.9%	30.50%	59.0%
12/31/2034	17.00%	49.3%	32.00%	59.7%
12/31/2035	17.00%	47.6%	33.50%	60.8%
12/31/2036	17.00%	45.8%	35.00%	62.2%
12/31/2037	17.00%	43.8%	36.50%	64.1%
12/31/2038	17.00%	41.9%	38.00%	66.5%
12/31/2039	17.00%	39.9%	39.50%	69.5%
12/31/2040	17.00%	37.8%	41.00%	73.1%
12/31/2041	17.00%	35.8%	42.50%	77.4%
12/31/2042	17.00%	33.9%	44.00%	82.5%
12/31/2043	17.00%	32.0%	45.50%	88.5%
12/31/2044	17.00%	30.2%	47.00%	95.3%
12/31/2045	17.00%	28.5%	48.50%	103.0%

*Cheiron Projection, May 2023*

2. Increase investment performance by increasing risk. There are several strategies affecting increased investment return. These include using different investment managers, making a riskier asset allocation, and attempting to lower fees. There is little we can do regarding these factors because we believe we have the appropriate managers, the appropriate asset allocation, and fees are already on the low end. Regarding asset allocation, the only way to increase expected returns in the future is to lower the fixed income allocation and add more to equities or other “riskier” assets. Investment performance has been solid over time and the risk level of the portfolio is already aggressive relative to our peers. The Board and the investment consultant believe that taking any more risk would be imprudent. Conversely, taking less risk would decrease our chances of achieving the 7.5% target.
3. Reduce benefits. While unpopular and considered the last resort, reducing benefits would require re-opening the CSA for a prolonged negotiation.
4. As the City has done before, explore issuing judgment bonds to reduce the unfunded actuarial liability. As of 12/31/2022, the unfunded actuarial liability for the Pension Trust was \$803.4mm.

### **Recommendation**

At this time, we recommend the following:

1. That City Council adopt a plan to continue increasing the Pension Trust employer contribution incrementally on an annual basis to assure full funding in 2045 (see table, page 8)
2. That the Incremental Annual Increase Plan be updated every two years in anticipation of the City’s fiscal year biennial budget.
3. That the City Council approve and appropriate the Pension Trust employer contribution in accordance with each updated Incremental Annual Increase Plan.
4. That the City Manager continue to negotiate the Health Funding Policy with class counsels, consider the input and recommendations from the CRS Board, and that the City Council approve the funding policy for the Healthcare Trust to ensure that the promises to CRS members will be met well into the future. The Healthcare Trust was well funded as of the December 31, 2022, valuation and does not now require an ADC amount but may in the future.
5. That the City comply with the CSA to assure that the DROP program is cost neutral to the CRS Pension Trust and does not negatively impact the CRS Funding Ratio.

Immediate action is requested. Further delays will result in higher contributions in future years.

September 7, 2023

**To:** Mayor and Members of City Council

202301964

**From:** Sheryl M.M. Long, City Manager

**Subject: Emergency Ordinance – Approving and Authorizing a CRA Tax Exemption Agreement with So Much Better LLC**

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Attached is an Emergency Ordinance captioned:

**APPROVING AND AUTHORIZING** the City Manager to execute a Community Reinvestment Area Tax Exemption Agreement with So Much Better, LLC, thereby authorizing an eight-year tax exemption for 100 percent of the value of improvements made to real property located at 635 Main Street in the Central Business District of Cincinnati, in connection with the remodeling of an existing building into approximately 1,920 square feet of commercial space and 1,720 square feet of office space, at a total construction cost of approximately \$557,501.

### **BACKGROUND/CURRENT CONDITIONS**

The property is located at 635 Main Street near the corner of Main and E. 7<sup>th</sup> Street in the Central Business District. This historic building is approximately 150 years old and currently sits vacant. The building previously was home to the Hathaway Stamp company and at one point was a women’s hat shop. Throughout the life of the building, the ground floor has primarily been used as a commercial space, with the remaining floors being used as storage space. This project will renovate the two lower floors of the building into a reception space and law offices. The building is in excellent structural condition and maintains its historic façade.

### **DEVELOPER INFORMATION**

So Much Better, LLC is headed by Christopher P. Finney, owner of Finney Law Firm, the Project’s future commercial tenant. Mr. Finney and his affiliated companies have been involved in several development projects, including the restoration and conversion of the adjacent property, 633 Main Street, into three residential condos and a hair salon. Other projects that Mr. Finney and his associates have completed include the renovation of a 16,000 sq. ft. office space at 7373 Beechmont Avenue, the renovation of a 14-unit office building in Ft. Thomas, Kentucky, the development and sale of the Massie’s Point and Todd’s Fork residential subdivisions, and the ownership and sale of numerous other residential units around the region.

CRA Agreement – 636 Main Street

*So Much Better, LLC*

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**RECOMMENDATION**

The Administration recommends approval of this Emergency Ordinance so that the Developer can commence construction as soon as possible.

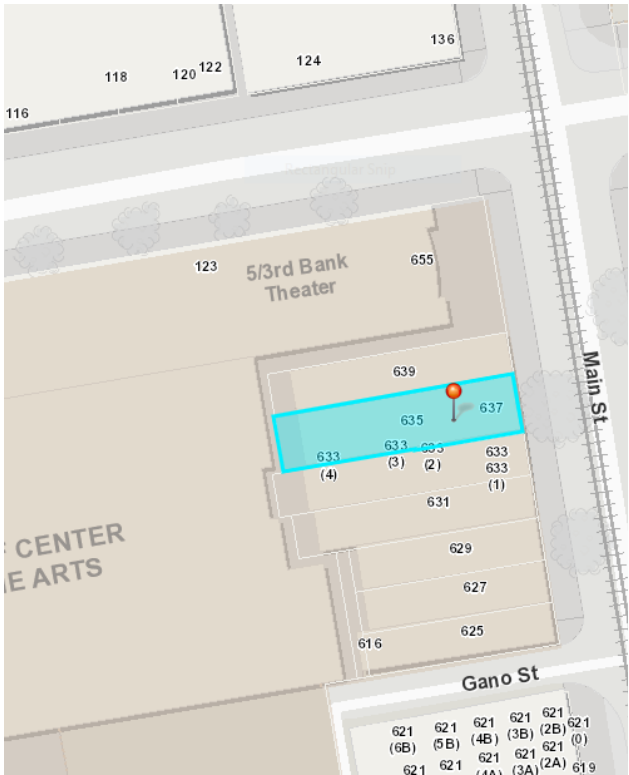
Attachment: Project Outline and Proposed Incentive

Copy: Markiea L. Carter, Director, Department of Community & Economic Development

**Project Outline**

Project Name	635 Main Street
Street Address	635 Main Street
Neighborhood	Downtown
Property Condition	Primarily Vacant Building
Project Type	Renovation
Project Cost	Hard Construction Costs: \$557,501 Acquisition Costs: \$199,000 Soft Costs: \$83,575
Private Investment	Private Financing: None Developer Equity: \$840,076
Sq. Footage by Use	Commercial: 1,920 sq. ft. Office: 1,720 sq. ft.
Rent Ranges	\$23.35 per sq. ft.
Jobs and Payroll	Created FTE Positions: 9 Total Payroll for Created FTE Positions: \$987,596 Average Salary for Created FTE Positions: \$109,733 Construction FTE Positions: 1 Total Payroll for Construction FTE Positions: \$50,000
Location and Transit	Located within the Central Business District; Walk Score of 96, Transit Score of 80, and Bike Score of 64
Community Engagement	Developer has met with surrounding property owners
Plan Cincinnati Goals	Compete Initiative Area Goal 2 (p. 114-120), Sustain Initiative Area Goal 2 (p.193-198)

**Project Image and Site Map**





### **Proposed Incentive**

Incentive Terms	8-year, net 52%
Incentive Application Process	Commercial CRA – Downtown Streetcar Area (Non-LEED)
“But For”	Without Abatement: Year 5: 8% (stabilized vacancy) With Abatement: Year 5: 10% (stabilized vacancy)
Environmental Building Certification	Non-LEED
VTICA	Streetcar VTICA – 15%
SBE/MBE/WBE Goals	SBE Goal of 30%
Other Incentives & Approvals	Developer is pursuing residential tax abatements for condominium units being created on the third and fourth floors of the building outside the scope of the commercial portion of this project.

### **Potential Taxes Forgone & Public Benefit**

<b>Taxes Forgone</b>	<b>Value</b>
Annual Net Incentive to Developer	\$4,972
Total Term Incentive to Developer	\$39,774
City's Portion of Property Taxes Forgone (Term)	\$0
City's TIF District Revenue Forgone (Term)	\$55,837

<b>Public Benefit</b>	<b>Value</b>	
CPS PILOT	Annual	\$3,155
	Total Term	\$25,241
VTICA	Annual	\$1,434
	Total Term	\$11,473
Income Tax Total Term (Maximum)	\$143,114	
Total Public Benefit (CPS PILOT, VTICA, Income Tax)	\$179,828	

<b>Total Public Benefit ROI*</b>	<b>\$4.52</b>
<b>City's ROI**</b>	<b>\$2.56</b>

\* This figure represents the total dollars returned for public purposes (City/Schools/Other) over the benefit received.

\*\*This figure represents the total income tax generated for the City over the City's property taxes forgone.

**EMERGENCY**

**TJL**

**- 2023**

**APPROVING AND AUTHORIZING** the City Manager to execute a Community Reinvestment Area Tax Exemption Agreement with So Much Better, LLC, thereby authorizing an eight-year tax exemption for 100 percent of the value of improvements made to real property located at 635 Main Street in the Central Business District of Cincinnati, in connection with the remodeling of an existing building into approximately 1,920 square feet of commercial space and approximately 1,720 square feet of office space, at a total construction cost of approximately \$557,501.

WHEREAS, to encourage the development of real property and the acquisition of personal property, Council by Ordinance No. 274-2017 passed on September 27, 2017, designated the area within the corporate boundaries of the City of Cincinnati as a “Community Reinvestment Area” pursuant to Ohio Revised Code (“R.C.”) Sections 3735.65 through 3735.70 (the “Statute”); and

WHEREAS, Ordinance No. 275-2017 passed by Council on September 27, 2017, as amended by Ordinance No. 339-2018, passed by Council on October 31, 2018, sets forth certain additional policies, conditions, and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area; and

WHEREAS, effective October 23, 2017, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute; and

WHEREAS, So Much Better, LLC (the “Company”) desires to remodel an existing building on real property at 635 Main Street located within the corporate boundaries of the City of Cincinnati into approximately 1,920 square feet of commercial space and 1,720 square feet of office space (the “Improvements”), provided that the appropriate development incentives are available to support the economic viability of the Improvements; and

WHEREAS, to provide an appropriate development incentive for the Improvements, the City Manager has recommended a Community Reinvestment Area Tax Exemption Agreement, in substantially the form of Attachment A to this ordinance, to authorize a real property tax exemption for the Improvements in accordance with the Statute; and

WHEREAS, the property is located within the Cincinnati City School District; and

WHEREAS, the Board of Education of the Cincinnati City School District (the “Board of Education”), pursuant to that certain Tax Incentive Agreement effective as of April 28, 2020 (as may be amended, the “Board of Education Agreement”), has approved exemptions of up to 100 percent of Community Reinvestment Area projects, waived advance notice and the right to

review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects; and

WHEREAS, pursuant to the Board of Education Agreement, the Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to 33 percent of the exempt real property taxes; and

WHEREAS, the Company has represented that it has entered into (or will enter into) a voluntary tax incentive contribution agreement with a third-party organization for amounts equal to fifteen percent of the exempt real property taxes, which funds shall be committed by the third-party organization to support the streetcar that specially benefits the property; and

WHEREAS, the City's Department of Community and Economic Development estimates that the real property tax exemption for the Improvements will provide an annual net benefit to the Company in the amount of approximately \$4,972; and

WHEREAS, the Improvements do not involve relocation of part or all of the Company's operations from another county or municipal corporation in Ohio or, if there is relocation, notice has been given per R.C. Section 3735.673; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That Council approves a Community Reinvestment Area Tax Exemption Agreement with So Much Better, LLC (the "Agreement"), thereby authorizing an eight-year tax exemption for 100 percent of the assessed value of improvements to be made to real property located at 635 Main Street in Cincinnati, as calculated by the Hamilton County Auditor, in connection with the remodeling of an existing building into approximately 1,920 square feet of commercial space and approximately 1,720 square feet of office space, to be completed at a total construction cost of approximately \$557,501.

Section 2. That Council authorizes the City Manager:

- (i) to execute the Agreement on behalf of the City of Cincinnati (the "City") in substantially the form of Attachment A to this ordinance; and
- (ii) to submit on behalf of Council annual reports on the Agreement to the Director of the Ohio Department of Development, in accordance with Ohio Revised Code Section 3735.672, and to the Board of Education of the Cincinnati City School District, as necessary; and

- (iii) to take all necessary and proper actions to fulfill the City’s obligations under the Agreement.

Section 3. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to allow the remodeling described in this ordinance and the corresponding revitalization of the City of Cincinnati and the benefits to the City’s economic welfare to begin at the earliest possible time.

Passed: \_\_\_\_\_, 2023

\_\_\_\_\_  
Aftab Pureval, Mayor

Attest: \_\_\_\_\_  
Clerk

Community Reinvestment Area Tax Exemption Agreement

This Community Reinvestment Area Tax Exemption Agreement (this “Agreement”) is made and entered into as of the Effective Date (as defined on the signature page hereof) by and between the CITY OF CINCINNATI, an Ohio municipal corporation (the “City”), and SO MUCH BETTER, LLC, an Ohio limited liability company (the “Company”).

Recitals:

- A. The City, through the adoption of Ordinance No. 274-2017 on September 27, 2017, designated the entire City of Cincinnati as a Community Reinvestment Area to encourage the development of real property and the acquisition of personal property in that area, pursuant to Ohio Revised Code Sections 3735.65 through 3735.70 (the “Statute”).
- B. In accordance with the Statute, the Ohio Director of Development has forwarded to the City the Director’s determination dated October 23, 2017, stating that the findings contained in Ordinance No. 274-2017 are valid and that the entire City is a Community Reinvestment Area under the Statute. By such determination, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute.
- C. The Council of the City of Cincinnati has also passed Ordinance No. 275-2017 as of September 27, 2017, as amended by Ordinance No. 339-2018, passed on October 31, 2018, Ordinance No. 370-2020, passed on November 12, 2020, and Ordinance No. 24-2022, passed on February 2, 2022 (as amended, the “Commercial Policy Ordinance”), which sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area.
- D. The Company is the sole owner of certain real property within the City, located at 635 Main Street, Cincinnati, Ohio 45202 (the “Property”), as further described in Exhibit A (Legal Description of Property) hereto. Notwithstanding the foregoing, the Property shall not include any residential condominiums being developed in connection with the Project (as defined below) (the “Excluded Property”), and the Company acknowledges and agrees that the City’s Community Reinvestment Area program entails separate applications by the owner of any residential condominium units included within the Project. For the avoidance of doubt, the Excluded Property shall not be exempt under this Agreement; however, this provision shall not be deemed to prohibit any owners from time to time of any Excluded Property from separately applying for a tax abatement in accordance with applicable law.
- E. The Company has proposed the remodeling of a building located on the Property, within the boundaries of the City of Cincinnati, as more fully described in Section 1 herein (the “Project”); provided that the appropriate development incentives are available to support the economic viability of the Project.
- F. The Statute provides that if any part of a project is to be used for commercial or industrial purposes, including projects containing five or more dwelling units, in order to be eligible for tax exemption the City and the Company must enter into an agreement pursuant to Ohio Revised Code Section 3735.671 prior to commencement of construction or remodeling.
- G. The City, having appropriate authority under the Statute for this type of project, agrees (as provided herein and subject to all conditions herein) to provide the Company with the tax exemption incentives stated herein, available under the Statute, for development of the Project.

- H. The Company has submitted to the City an application for this tax exemption agreement (the "Application"), a copy of which is attached hereto as Exhibit B, has remitted with the Application the City application fee of One Thousand Two Hundred Fifty Dollars (\$1,250) made payable to the City.
- I. The Director of the City's Department of Community and Economic Development has recommended approval of the Application on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunities and improve the economic climate of the City.
- J. The Board of Education of the Cincinnati City School District (the "Board of Education"), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020, has approved exemptions of up to one hundred percent (100%) of Community Reinvestment Area projects, waived advance notice and right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects.
- K. The Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to thirty-three percent (33%) of the full amount of exempt real property taxes that would have been paid to Hamilton County if this Agreement were not in effect (the "Board of Education Agreement").
- L. The Company represents and warrants to the City that the Company and its major tenants, if any, do not intend to relocate part or all of their operations to the City from another county or municipal corporation in the State of Ohio (the "State").
- M. The Company represents that within the past three (3) years neither the Company, nor any related member of the Company nor any entity to which the Company is a successor has discontinued operations at a project site in the State during the term of a property tax exemption agreement (under Ohio Revised Code Section 3735.671, 5709.62, 5709.63 or 5709.632) applicable to that site, and the Company acknowledges that misrepresentation hereunder will result in voiding of this Agreement.
- N. The Company represents and warrants to the City that the Company is not subject to an Enterprise Zone Agreement with the City of Cincinnati for the Property or the Project.
- O. City Council passed (i) Motion No. 201401368 on November 19, 2014, establishing a tax incentive policy that incentivizes each applicant for a real property tax abatement in the neighborhoods of Downtown and OTR to enter into a voluntary tax incentive contribution agreement with a third-party organization ("VTICA") for an amount equal to a percentage of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement (the "VTICA Contribution"), which funds shall be committed by a third-party organization to support the streetcar that specially benefits the abated property, and (ii) Motion No. 201501592 on December 16, 2015, which established that the VTICA Contribution to be recognized by the Director of the Department of Community and Economic Development is 15% of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement. The Commercial Policy Ordinance confirmed that such motions have not been superseded and remain the will of Council.
- P. The Company acknowledges that the Streetcar will specially benefit the Project due to (a) the Streetcar's enhancement of public transit options in such neighborhoods and (b) the anticipated increase in property values attributable to public investment in Streetcar infrastructure.
- Q. The Company represents and warrants to the City that the Company has entered or will enter into a VTICA and shall pay the VTICA Contribution each year for the full term of the abatement.
- R. This Agreement has been authorized by Ordinance No. \_\_\_\_\_-2023, passed by Cincinnati City Council on \_\_\_\_\_, 2023.

- S. In determining to recommend and authorize this Agreement, the Department of Community and Economic Development and City Council, respectively, have acted in material reliance on the Company's representations in the Application and herein regarding the Project including, but not limited to, representations relating to the number of jobs to be created and/or retained by the Company, the Board of Education Agreement, the VTICA Contribution, and the Project's effect in promoting the general welfare of the people of Cincinnati by, for example, encouraging the development of real property located in the Community Reinvestment Area and thereby promoting economic growth and vitality in Cincinnati.

NOW, THEREFORE, pursuant to Ohio Revised Code Section 3735.67(A) and in conformity with the format required under Ohio Revised Code Section 3735.671, in consideration of the mutual covenants contained herein and the benefit to be derived by the parties from the execution hereof, the parties agree as follows:

Section 1. Project. Upon issuance of the necessary zoning and building approvals, the Company agrees to remodel the existing building on the Property to create approximately 1,920 square feet of commercial space and approximately 1,720 square feet of office space (the "Improvements") at an estimated aggregate cost of \$557,501 to commence after the execution of this Agreement and to be completed no later than January 1, 2026; *provided*, however, that the Director of the Department of Community and Economic Development (the "Housing Officer") may, in his or her discretion, extend such deadline for a period of up to 12 months by written notice if, in the Director's judgment, the Company is proceeding in good faith towards completion. The remodeling shall be in compliance with applicable building code requirements and zoning regulations. In addition to the foregoing, (A) the Project shall comply with the Americans with Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, the "**ADA**"), and (B) if (i) any building(s) within the Project is subject to the accessibility requirements of the ADA (e.g., by constituting a "place of public accommodation" or another category of structure to which the ADA is applicable) and (ii) such building(s) is not already required to meet the Contractual Minimum Accessibility Requirements (as defined below) pursuant to the ADA, applicable building code requirements, or by any other legal requirement, then the Company shall cause such building(s) to comply with the Contractual Minimum Accessibility Requirements in addition to any requirements pursuant to the ADA and the applicable building code or legal requirement. As used herein, "**Contractual Minimum Accessibility Requirements**" means that a building shall, at a minimum, include (1) at least one point of entry (as used in the ADA), accessible from a public right of way, with respect to which all architectural barriers (as used in the ADA) to entry have been eliminated, and (2) if such accessible point of entry is not a building's primary point of entry, conspicuous signage directing persons to such accessible point of entry.

Section 2. Real Property Tax Exemption. Subject to the satisfaction of the conditions set forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of 100% of the amount by which the Improvements increase the assessed value of the Property as determined by the Hamilton County Auditor, for a period of 8 years, provided that the Company shall have entered into the Board of Education Agreement. Within 120 days after completion of the Project (unless otherwise extended in writing by the City's Housing Officer), the Company must file the appropriate application for tax exemption with the City's Housing Officer. The Company is solely responsible to take this action. Upon receipt of the application for tax exemption, the City will proceed with the exemption authorized by this Agreement. In accordance with Ohio Revised Code Section 3735.67, the exemption is conditioned on verification by the Housing Officer of (A) the completion of remodeling, (B) the cost of remodeling, (C) the facts asserted in the application for exemption, and (D) if a remodeled structure is a structure of historical or architectural significance as designated by the City, state or federal government, that the appropriateness of the remodeling has been certified in writing by the appropriate agency. If the required verification is made, the Housing Officer will forward the exemption application to the Hamilton County Auditor with the necessary certification by the Housing Officer. Subject to the conditions set forth in this Agreement, the exemption commences the first tax year for which the Improvements would first be taxable were the Improvements not exempted from taxation. The dates provided in this paragraph refer to tax years in which the subject property is assessed, as opposed to years

in which taxes are billed. No exemption shall commence after tax year 2026 nor extend beyond the earlier of (i) tax year 2033 or (ii) the end of the eighth (8<sup>th</sup>) year of exemption.

Section 3. Use; Maintenance; Inspections. The Company shall use the Property solely for the purposes described in Section 1 hereof and shall properly maintain and repair the Property throughout the period of tax exemption authorized herein. The Company authorizes the Housing Officer, or the Housing Officer's designees, to enter upon the Property as reasonably required to perform property inspections in accordance with Ohio Revised Code Section 3735.68.

Section 4. Compliance with Board of Education Agreement. As a condition of the tax exemption authorized under this Agreement, the Company agrees to enter into and comply with its obligation under the Board of Education Agreement.

Section 5. Duty of Company to Pay Taxes. As required by Ohio Revised Code Section 3735.671(B)(3), the Company shall pay such real property taxes as are not exempted under this Agreement and are charged against the Property and shall file all tax reports and returns as required by law. If the Company fails to pay such taxes or file such returns and reports, exemptions from taxation granted or authorized under this Agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and continuing thereafter.

Section 6. Company Certifications Regarding Non-Delinquency of Tax Obligations. As required by Ohio Revised Code Section 3735.671(B)(4), the Company certifies that at the time this Agreement is executed, the Company does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State, and does not owe delinquent taxes for which the Company is liable under Ohio Revised Code Chapters 5735, 5739, 5741, 5743, 5747 or 5753, or if such delinquent taxes are owed, the Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C. §101, et seq., or such a petition has been filed against the Company. For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.

Section 7. Covenant of Satisfaction of Tax and Other Obligations. In accordance with Ohio Revised Code Section 9.66, (A) the Company affirmatively covenants that it does not owe: (i) any delinquent taxes to the State or to a political subdivision of the State; (ii) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the State; or (iii) any other moneys to the State, a State agency or a political subdivision of the State that are past due, regardless of whether the amounts owed are being contested in a court of law or not; (B) the Company authorizes the City and/or the State to inspect the personal financial statements of the Company, including tax records and other similar information not ordinarily open to public inspection; and (C) the Company authorizes the Ohio Environmental Protection Agency and the Ohio Department of Taxation to release information to the City and or other State departments in connection with the above statements. As provided by statute, a knowingly false statement under this section may be prosecuted as a first degree misdemeanor under Ohio Revised Code Section 2921.13, may render the Company ineligible for any future economic development assistance from the State or any political subdivision of the State, and will result in the City requiring the Company's repayment of any assistance provided by the City in connection with the Project.

Section 8. City Cooperation. As required by Ohio Revised Code Section 3735.671(B), upon specific request from the Company, the City shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

Section 9. Continuation of Exemptions. As provided in Ohio Revised Code Section 3735.671(B), if for any reason the City revokes the designation of the City of Cincinnati as a Community Reinvestment Area, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless the Company materially fails to fulfill its obligations under this



Agreement and the City terminates or modifies the exemptions from taxation authorized pursuant to this Agreement.

Section 10. City Not Liable. The Company acknowledges that the exemption authorized in this Agreement is subject to approval and implementation by the appropriate state and/or county taxing authorities. The Company acknowledges that the City does not give any guarantee or assurance that the exemption approved in this Agreement will be so approved, and the Company agrees that in no event shall the Company seek to hold the City liable in any way in the event such exemption is not granted or implemented.

Section 11. Small Business Enterprise Program.

A. Compliance with Small Business Enterprise Program. The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises (as such term is defined in Cincinnati Municipal Code (“CMC”) Section 323-1-S, “SBEs”). Pursuant to CMC Section 323-11, the City’s annual goal for SBE participation shall be thirty percent (30%) of the City’s total dollars spent for construction (as such term is defined in CMC Section 323-1-C4), supplies (as such term is defined in CMC Section 323-1-S5), services (as such term is defined in CMC Section 323-1-S) and professional services (as such term is defined in CMC Section 323-1-P2). Accordingly, the Company shall use its best efforts and take affirmative steps to achieve the City’s goal of voluntarily meeting thirty percent (30%) SBE participation. A list of SBEs may be obtained from the City’s Department of Economic Inclusion. The Company may refer interested firms to the City’s Department of Economic Inclusion for review and possible certification as an SBE. The Company shall comply with the provisions of CMC Chapter 323, including without limitation taking at least the following affirmative steps:

- (i) Including qualified SBEs on solicitation lists.
- (ii) Assuring that SBEs are solicited whenever they are potential sources. The Company must advertise, on at least two separate occasions, both in local minority publications and in other local newspapers of general circulation, invitations to SBEs to provide services, to supply materials, or to bid on construction contracts, as applicable.
- (iii) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum SBE participation.
- (iv) If any subcontracts are to be let, the Company shall require the prime contractor (if different from the Company) to take the above affirmative steps.
- (v) Prior to the commencement of work under any subcontracts, the Company shall provide to the City a list of such subcontractors, including information as to the dollar amount of the subcontracts and such other information as may be requested by the City. The Company shall update the report monthly.
- (vi) The Company shall periodically document its best efforts and affirmative steps to meet the above SBE participation goals by submitting such information as may be requested from time to time by the City.

B. Remedies for Noncompliance with Small Business Enterprise Program. Failure of the Company or its contractors and subcontractors to take the affirmative steps specified above, to provide fair and equal opportunity to SBEs, or to provide technical assistance to SBEs as may be necessary to reach SBE participation as set out in CMC Chapter 323 may be construed by the City as failure of the Company to use its best efforts, and, in addition to other remedies under this Agreement, may be a cause for the City to file suit in Common Pleas Court to enforce specific performance of the terms of this Section. The provisions of CMC Section 323-99 are hereby incorporated by reference into this Agreement.

Section 12. Jobs. The Company represents that, as of the date of the execution of this Agreement, the Company and its major tenants have (a) no existing employment at the Property, (b) 4 full-time equivalent employees in the City of Cincinnati, with a total annual payroll of \$425,000 (the “Retained Jobs”), (c) 11 full-time equivalent employees in Union Township, Clermont County, Ohio, and (d) 5 full-time equivalent employees at another location in the State.

Section 13. Job Creation and Retention.

A. Jobs to be Retained by Company. The Company agrees to use its best efforts to relocate and retain the Retained Jobs to the Property in connection with the Project.

B. Jobs to be Created by Company. The Company agrees to use its best efforts to create (i) 9 full-time permanent jobs, and (ii) 1 full-time temporary construction job at the Property in connection with the Project. In the case of the construction jobs, the job creation and retention period shall be concurrent with remodeling, and in the case of the other jobs described herein, the job creation period shall begin upon completion of remodeling and shall end three (3) years thereafter.

C. Company's Estimated Payroll Increase. The Company's increase in the number of employees will result in approximately (i) \$987,596 of additional annual payroll with respect to the full-time permanent jobs, and (ii) \$50,000 of additional annual payroll prior to the completion of the Project with respect to the full-time temporary construction job.

D. Community Reinvestment Area Employment. The Company shall (i) adopt hiring practices to ensure that at least twenty-five percent (25%) of the new employees shall be residents of the City of Cincinnati and (ii) give preference to residents of the City relative to residents of the State who do not reside in the City when hiring new employees under this Agreement.

E. Posting Available Employment Opportunities. To the extent allowable by law, the Company shall use its best efforts to post available employment opportunities within the Company's organization or the organization of any subcontractor working with the Company with the Ohio Means Jobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-746-7200.

Section 14. Equal Employment Opportunity. This Agreement is subject to the City's Equal Employment Opportunity Program contained in CMC Chapter 325. The Equal Employment Opportunity Clause in CMC Section 325-9 is incorporated by reference in this Agreement. The term "Company" is substituted for "Contractor" throughout CMC Section 325-9 in the context of this Agreement.

Section 15. Compliance with Immigration and Nationality Act. In the performance of its obligations under this Agreement, the Company agrees to comply with the provisions of the Immigration and Nationality Act codified at 8 U.S.C. §§ 1324a(a)(1)(A) and (a)(2). Any noncompliance with such provisions shall be solely determined by either the federal agencies authorized to enforce the Immigration and Nationality Act or the U.S. Attorney General, in accordance with Executive Order 12989 of the U.S. President dated February 13, 1996, and as amended by Executive Order 13465 of the U.S. President dated June 6, 2008.

Section 16. Default. As provided in Ohio Revised Code Section 3735.671(B), if the Company materially fails to fulfill its obligations under this Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement (Section 6 hereof) or the covenant of satisfaction of tax and other obligations (Section 7 hereof) is fraudulent, the City may terminate or modify the exemptions from taxation granted or authorized under this Agreement and may require the repayment by the Company of the amount of taxes that would have been payable had the Improvements not been exempted from taxation pursuant to this Agreement. A modification of exemption may be in the form of reduction in the number of years that eligible property is exempt and/or a reduction in the exemption percentage. The City shall provide written notice to the Company prior to finding the Company in default under this section. The notice shall provide the Company with not less than thirty (30) days to cure the default prior to City termination or modification of the exemptions under this Agreement. The City may extend the cure period as reasonably necessary under the circumstances. In the event of such termination or modification, the City is authorized to so notify the appropriate taxing authorities in order to effect the termination or modification. If repayment of previously exempt taxes is required by the City under this Section, such amount shall be paid as directed by the City within thirty (30) days of written demand. The City may secure repayment of such taxes by a

lien on the Property in the amount required to be repaid. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property. Amounts due and not paid when due under this Section 16 shall bear interest at the rate specified in Ohio Revised Code Section 1343.03(A) (as in effect on the date of the City's payment demand).

Section 17. Annual Review and Report. As required by Ohio Revised Code Sections 3735.671(B)(5) and 5709.85, the Company shall provide to the City's Tax Incentive Review Council (or to the City Manager if so requested by the City) any information reasonably required by the Council or the City Manager to evaluate the Company's compliance with this Agreement, including returns filed pursuant to Ohio Revised Code Section 5711.02 if requested by the Council or City Manager. The performance of the Company's obligations stated in this Agreement shall be subject to annual review by the City's Tax Incentive Review Council (the "Annual Review and Report"). The Company shall submit information for the Annual Review and Report to the City no later than March 1 of each year.

Section 18. Revocation.

A. Generally. Pursuant to Ohio Revised Code Section 3735.68, the housing officer shall make annual inspections of the properties within the community reinvestment area upon which are located structures or remodeling for which an exemption has been granted under Ohio Revised Code Section 3735.67. If the housing officer finds that the property has not been properly maintained or repaired due to the neglect of the Company, the housing officer may revoke the exemption at any time after the first year of exemption. If the Company has materially failed to fulfill its obligations under this Agreement, or if the owner is determined to have violated division (E) of that section (see Section 18(B) of this Agreement), City Council, subject to the terms of the agreement, may revoke the exemption at any time after the first year of exemption. The housing officer or City Council shall notify the county auditor and the Company that the tax exemption no longer applies. If the housing officer or legislative authority revokes a tax exemption, the housing officer shall send a report of the revocation to the community reinvestment area housing council and to the tax incentive review council established pursuant to section 3735.69 or 5709.85 of the Revised Code, containing a statement of the findings as to the maintenance and repair of the property, failure to fulfill obligations under the written agreement, or violation of division (C) of Ohio Revised Code Section 3735.671, and the reason for revoking the exemption.

B. Prior Statutory Violations. The Company represents and warrants to the City that it is not prohibited by Ohio Revised Code Section 3735.671(C) from entering into this Agreement. As required by Ohio Revised Code Section 3735.671(B)(7), exemptions from taxation granted or authorized under this Agreement shall be revoked if it is determined that the Company, any successor to the Company or any related member (as those terms are defined in division (C) of Ohio Revised Code Section 3735.671) has violated the prohibition against entering into this Agreement under division (C) of Ohio Revised Code Section 3735.671 or under Ohio Revised Code Sections 5709.62, 5709.63, or 5709.632 prior to the time prescribed by that division or either of those sections.

Section 19. False Statements; Penalties; Material Representations.

A. Generally. As required in connection with Ohio Revised Code Section 9.66(C), the Company affirmatively covenants that it has made no false statements to the State or the City in the process of obtaining approval for this Agreement. If any representative of the Company has knowingly made a false statement to the State or the City to obtain approval for this Agreement, or if the Company fails to provide any information expressly required under the Application, the Company shall be required to immediately return all benefits received under this Agreement (by payment of the amount of taxes exempted hereunder, paid as directed by the City within thirty (30) days of written demand) and the Company shall be ineligible for any future economic development assistance from the State, any State agency or any political subdivision of the State pursuant to Ohio Revised Code Section 9.66(C)(1). Amounts due and not paid under this Section 19 shall bear

interest at the rate of twelve percent (12%) per year. Any person who provides a false statement to secure economic development assistance (as defined in Ohio Revised Code Section 9.66) may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2921.13(F)(1), which is punishable by fine of not more than One Thousand Dollars (\$1,000) and/or a term of imprisonment of not more than six (6) months.

B. Material Representations – Board of Education Agreement and VTICA. The Parties acknowledge and agree that a material failure by the Company to comply with its representations concerning the Board of Education Agreement or VTICA Contribution shall constitute an event of default for purposes of Section 16 (Default) and the basis for revocation under Section 18 (Revocation). Subject to the terms of the VTICA, if the VTICA is unenforceable for reasons of infeasibility or otherwise, the Company shall enter into alternative arrangements providing for the economic equivalent of the VTICA Contribution in order to support the streetcar. Such arrangements may include, but are not limited to, providing for the economic equivalent of the VTICA Contribution through formation of a special improvement district. For purposes of this Section 19.B, alternative arrangements must result in services substantially similar to those that would have been supported through the VTICA and at a value that is the economic equivalent of the VTICA Contribution, which value shall not be required to exceed the VTICA Contribution amount that would have been payable by the Company. Any determination of infeasibility or mechanism for providing alternative arrangements is subject to approval by the City at its sole discretion. Nothing in this Section 19.B shall operate to limit the City's enforcement authority under this Agreement including, without limitation, Section 16, Section 18, and Section 19.A.

Section 20. Conflict of Interest. The Company covenants that, to the Company's knowledge, no employee of the City has any personal interest, direct or indirect, in any matters pertaining to the Project, and the Company agrees to take appropriate steps to prevent any employee of the City from obtaining any such interest throughout the term of this Agreement.

Section 21. Annual Fee. The Company shall pay an annual fee of Five Hundred Dollars (\$500) or one percent (1%) of the annual taxes exempted under this Agreement, whichever is greater, but not to exceed Two Thousand, Five Hundred Dollars (\$2,500) per annum. This fee is due with submission of the information for Annual Review and Report by March 1 of each year.

Section 22. Discontinued Operations. As provided in Ohio Revised Code Section 3735.671(C), if, prior to the expiration of the term of this Agreement, the Company discontinues operations at the Project so that the Property is no longer being used for the purposes described in Section 1 hereof, then the Company, its successors, and any related member shall not enter into an agreement under Ohio Revised Code Sections 3735.671, 5709.62, 5709.63, or 5709.632, and no legislative authority shall enter into such an agreement with the Company, its successors or any related member prior to the expiration of three (3) years after the discontinuation of operations. As used in this Section 22, "successors" and "related member" shall have the meanings set forth in Ohio Revised Code Section 3735.671(C).

Section 23. Notices. Unless otherwise specified herein, each party shall address written notices, demands and communications in connection with this Agreement to the other party as follows (or to such other address as is communicated in accordance with this Section):

To the City:

City of Cincinnati  
Attention: Director of the Department of Community and Economic Development  
Centennial Plaza Two, Suite 700  
805 Central Avenue  
Cincinnati, Ohio 45202

To the Company:

So Much Better, LLC  
Attention: Christopher P. Finney  
4270 Ivy Pointe Blvd., Suite 225  
Cincinnati, Ohio 45245

If the Company sends a notice to the City alleging that the City is in default under this Agreement, the Company shall simultaneously send a copy of such notice to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

Section 24. Acknowledgment of City Participation. The Company agrees to acknowledge the support of the City on construction signs, project and exhibition signage, and any publicity such as that appearing on the internet, television, cable television, radio, or in the press or any other printed media. In identifying the City as a Project partner, the Company shall use either the phrase "Project Assistance by the City of Cincinnati" or a City of Cincinnati logotype or other form of acknowledgement that has been approved in advance in writing by the City.

Section 25. Entire Agreement. This Agreement and the Exhibits attached hereto constitute the entire agreement between the City and the Company with respect to the subject matter herein, superseding any prior or contemporaneous agreement with respect thereto.

Section 26. Governing Law. This Agreement is entered into and is to be performed in the State. The City and the Company agree that the law of the State of Ohio shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

Section 27. Waiver. The City's waiver of any breach by the Company of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

Section 28. Severability. This Agreement shall be severable; if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

Section 29. Amendment. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

Section 30. Non-Assignment. As required by Ohio Revised Code Section 3735.671(B)(6), this Agreement is not transferable or assignable by the Company without the express written approval of the City Manager of the City. If the Company has entered into a Board of Education Agreement or VTICA in connection with the Property, the City shall not approve the assignment of this Agreement unless the assignee has assumed the Company's remaining obligations under the Board of Education Agreement and VTICA, as applicable. Failure to assign or otherwise perform the Company's obligations under the Board of Education Agreement or VTICA upon transfer of the Property during the term of the tax abatement authorized by this Agreement shall be basis for revocation of the tax exemption under Section 18.

Section 31. Recording. At its election, the City may record this Agreement at the City's expense in the Hamilton County Recorder's Office.

Section 32. Legislative Action Required. As provided in Ohio Revised Code Section 3735.671, the Company and the City acknowledge that this Agreement must be approved by formal action of the City Council of the City as a condition for this Agreement to take effect. Notwithstanding anything to the contrary herein, this Agreement shall take effect after the later of the date of such approval or the final date of execution of this Agreement by all parties.

Section 33. Additional Representations and Warranties of Company. The Company represents and warrants that (a) it is duly organized and existing and it has full power and authority to take, and has taken, all action necessary to execute and deliver this Agreement and any other documents required or permitted to be executed or delivered by it in connection with this Agreement, and to fulfill its obligations hereunder; (b) no notices to, or consents, authorizations or approvals of, any person are required (other than any already given or obtained) for its due execution, delivery and performance of this Agreement; and (c) this Agreement has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of the Company.

Section 34. Certification as to Non-Debarment. The Company represents that neither it nor any of its principals is presently debarred by any federal, state, or local government agency. In completing the Project, the Company shall not solicit bids from any contractors or subcontractors who are identified as being debarred by any federal, state, or local government agency. If the Company or any of its principals becomes debarred by any federal, state, or local government agency during the term of this Agreement, the company shall be considered in default under this Agreement.

Section 35. Appeals. Pursuant to Ohio Revised Code Section 3735.70, a person aggrieved under the Statute or this Agreement may appeal to the community reinvestment area housing council, which shall have the authority to overrule any decision of a housing officer. Appeals may be taken from a decision of the council to the court of common pleas of the county where the area is located.

Section 36. Wage Enforcement.

(i) Applicability. Council passed Ordinance No. 22-2016 on February 3, 2016, which ordained Chapter 326 (Wage Enforcement) of the Cincinnati Municipal Code (the "Wage Enforcement Chapter"). The Wage Enforcement Chapter was then amended by Ordinance No. 96-2017, passed May 17, 2017. As amended, the Wage Enforcement Chapter imposes certain requirements upon persons entering into agreements with the City whereby the City provides an incentive or benefit that is projected to exceed \$25,000, as described more particularly in the Wage Enforcement Chapter. Cincinnati Municipal Code Section 326-5 requires that the language below be included in contracts subject to the Wage Enforcement Chapter.

(ii) Required Contractual Language. Capitalized terms used, but not defined, in this clause (ii) have the meanings ascribed thereto in the Wage Enforcement Chapter.

(a) This contract is or may be subject to the Wage Enforcement provisions of the Cincinnati Municipal Code. These provisions require that any Person who has an Agreement with the city or with a Contractor or Subcontractor of that Person shall report all Complaints or Adverse Determinations of Wage Theft and Payroll Fraud (as each of those terms is defined in Chapter 326 of the Cincinnati Municipal Code) against the Contractor or Subcontractors to the Department of Economic Inclusion within 30 days of notification of the Complaint or Adverse Determination.

(b) If this contract is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this contract is required to include provisions in solicitations and contracts regarding a Development Site that all employers, Contractors or Subcontractors performing or proposing to perform work on a Development Site provide an initial sworn and notarized "Affidavit Regarding Wage Theft and Payroll Fraud" on a form prescribed by the city manager or his or her designee and, within 30 days of an Adverse Determination or Complaint of Wage Theft or Payroll Fraud, shall provide an "Amended Affidavit Regarding Wage Theft and Payroll Fraud" on a form prescribed by the city manager or his or her designee.

(c) If this contract is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this contract is required to authorize, and does hereby specifically authorize, any local, state or federal agency, court, administrative body or other entity investigating a complaint of Wage Theft or Payroll Fraud against the Person (collectively "investigative bodies") to release to the City's Department of Economic Inclusion any and all evidence, findings,

complaints and determinations associated with the allegations of Wage Theft or Payroll Fraud upon the City's request and further authorizes such investigative bodies to keep the City advised regarding the status of the investigation and ultimate determination. If the investigative bodies require the Person to provide additional authorization on a prescribed form or in another manner, the Person shall be required to provide such additional authorization within 14 days of a request by the City.

(d) If this Agreement is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this Agreement shall include in its contracts with all Contractors language that requires the Contractors to provide the authorizations set forth in subsection (c) above and that further requires each Contractor to include in its contracts with Subcontractors those same obligations for each Subcontractor and each lower tier subcontractor.

(e) If this Agreement is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this Agreement shall post a conspicuous notice on the Development Site throughout the entire period work is being performed pursuant to the Agreement indicating that the work being performed is subject to Cincinnati Municipal Code Chapter 326, Wage Enforcement, as administered by the City of Cincinnati Department of Economic Inclusion. Such notice shall include contact information for the Department of Economic Inclusion as provided by the department.

(f) Under the Wage Enforcement provisions, the City shall have the authority, under appropriate circumstances, to terminate this contract or to reduce the incentives or subsidies to be provided under this contract and to seek other remedies, including debarment.

Section 37. Legal Requirements. In completing and operating the Project, the Company shall comply with all applicable statutes, ordinances, regulations, and rules of the government of the United States, State of Ohio, County of Hamilton, and City of Cincinnati.

Section 38. Counterparts and Electronic Signatures. This Agreement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

Remainder of this page intentionally left blank. Signature page follows.

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

CITY OF CINCINNATI,  
an Ohio municipal corporation

SO MUCH BETTER, LLC  
an Ohio limited liability company

By: \_\_\_\_\_  
Sheryl M. M. Long, City Manager

Date: \_\_\_\_\_, 2023

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2023

Authorized by resolution dated \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Assistant City Solicitor

Certified Date: \_\_\_\_\_

Fund/Code: \_\_\_\_\_

Amount: \_\_\_\_\_

By: \_\_\_\_\_  
Karen Alder, City Finance Director



**Exhibit A to CRA Agreement**

LEGAL DESCRIPTION OF PROPERTY

TO BE ATTACHED

**Exhibit B to CRA Agreement**  
APPLICATION FOR TAX EXEMPTION

TO BE ATTACHED

Date: September 7, 2023

To: Mayor and Members of City Council  
From: Sheryl M. M. Long, City Manager  
Subject: EMERGENCY ORDINANCE – AMENDING FUND 437 - WASSON WAY TRAIL DONATIONS

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202301950

Attached is an emergency ordinance captioned as follows:

**AMENDING** Ordinance No. 132-2018, which established Fund No. 437, “Wasson Way Trail Donations,” to change the name of the fund to “City Trails,” and to expand the purpose of the fund to enable the City to receive and expend funds, including but not limited to grants, donations, settlements, fees, lease payments, and other sources of funding, in support of the maintenance, projects, and needs of the entire City trail network.

In addition to the Wasson Way Trail Network, the City has several other trail projects in development such as the Ohio River Trail, Ohio River Trail West, and Mill Creek Trail. These City trail projects may receive funding from grants, donations, payment of leases, settlements, fees, and other sources of funding.

Amending Ordinance No. 132-2018 to change the name of the fund to “City Trails” and to expand the purpose of the fund will allow the City to receive financial resources for any City Trail. Upon receipt, further City Council authorization will still be necessary to transfer and appropriate these resources to City capital improvement project accounts.

The emergency clause is necessary due to the immediate need to rename and expand the scope of Fund No. 437 prior to the imminent receipt of anticipated sources of funding.

The Administration recommends passage of the attached ordinance.

cc: John S. Brazina, Director, Transportation and Engineering

**EMERGENCY**

**JRS**

**- 2023**

**AMENDING** Ordinance No. 132-2018, which established Fund No. 437, “Wasson Way Trail Donations,” to change the name of the fund to “City Trails,” and to expand the purpose of the fund to enable the City to receive and expend funds, including but not limited to grants, donations, settlements, fees, lease payments, and other sources of funding, in support of the maintenance, projects, and needs of the entire City trail network.

WHEREAS, Ordinance No. 132-2018, passed June 6, 2018, established Fund No. 437, “Wasson Way Trail Donations,” for the purpose of receiving and distributing private donations received by the City for the Wasson Way Trail Network; and

WHEREAS, in addition to the Wasson Way Trail Network, the City has several other trail projects in development such as the Ohio River Trail, Ohio River Trail West, and Mill Creek Trail, (“City Trails”); and

WHEREAS, these City Trails projects may require financial resources for property acquisition, planning, design, construction, and maintenance; and

WHEREAS, the needs of the City Trails may be funded by a variety of resources, including but not limited to grants, donations, payments from leases, settlements, fees, and other sources of funding; and

WHEREAS, there is a need to amend Ordinance No. 132-2018 to change the name of Fund No. 437 from “Wasson Way Trail Donations” to “City Trails,” and to expand the purpose of the fund to enable the City to receive and expend a variety of financial resources in support of the City Trails; and

WHEREAS, amending Ordinance No. 132-2018 in this manner is in accordance with various goals of the Green Cincinnati Plan (2023) as well as the “Sustain” goal to “[m]anage our financial resources” as described on page 199 of Plan Cincinnati (2012); now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That Sections 4 and 5 of Ordinance No. 0132-2018 are hereby amended as follows:

Section 4. That the Director of Finance is authorized to establish new Fund No. 437, “Wasson Way City Trails Donations,” for the purpose of receipt and disbursement of all private donations funds received by the City, including but not limited to grants, private donations, settlements, fees, payments from leases, and other sources of

funding, for the property acquisition, planning, design, construction, maintenance, and benefit of the City's trail network ~~Wasson Way Trail Network~~.

Section 5. That, upon receipt and deposit of funds into Fund 437, "Wasson Way City Trails Donations," City Council authorization will be necessary to transfer and appropriate resources to City capital improvement program project accounts for capital expenses related to the ~~construction of Wasson Way Trail Network~~ property acquisition, planning, design, and construction of the City's trail network.

Section 2. That all terms of Ordinance No. 0132-2018 not amended by this ordinance shall remain in full force and effect.

Section 3. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to rename and expand the scope of Fund No. 437 to account for anticipated sources and uses of the fund.

Passed: \_\_\_\_\_, 2023

\_\_\_\_\_  
Aftab Pureval, Mayor

Attest: \_\_\_\_\_  
Clerk

\_\_\_\_\_  
New language underscored. Deleted language indicated by strikethrough.

September 7, 2023

202301961

**To:** Mayor and Members of City Council

**From:** Sheryl M. M. Long, City Manager

**Subject:** **Emergency Ordinance – DOTE: Maintenance Fund for Bridges**

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Attached is an Emergency Ordinance captioned:

**ESTABLISHING** new capital improvement program project account no. 980x233x242367, “Maintenance Fund for Bridges 2022-2026,” for the purpose of maintaining and repairing Hamilton County-owned bridges and viaducts located within the City; **AUTHORIZING** the City Manager to accept and appropriate annual Municipal Road Fund allocations of up to \$1,000,000 from the Board of Hamilton County Commissioners, totaling up to \$5,000,000 for program years 2022 through 2026 (the “2022-2026 MRF Allocations”), in accordance with the bridge maintenance agreement entered into between the City and Hamilton County; and **AUTHORIZING** the Finance Director to deposit the 2022-2026 MRF Allocations into capital improvement program project account no. 980x233x242367, “Maintenance Road Fund for Bridges 2022-2026.”

This Emergency Ordinance authorizes the following:

1. establishment of new capital improvement program project account no. 980x233x232367, “Maintenance Fund for Bridges 2022-2026” for the purpose of maintaining and repairing Hamilton County-owned bridges and viaducts located within the City;
2. the City Manager to accept and appropriate annual Municipal Road Fund (MRF) allocations of up to \$1,000,000 from the Board of Hamilton County Commissioners, totaling up to \$5,000,000 for program years 2022 through 2026 (the “2022-2026 MRF Allocations”), in accordance with the bridge maintenance agreement entered into between the City and Hamilton County; and
3. the Finance Director to deposit the 2022-2026 MRF Allocations into capital improvement program project account no. 980x233x242367, “Maintenance Road Fund for Bridges 2022-2026.”

In Ordinance No. 0069-2017, Council authorized the City Manager to enter into an agreement with the Board of Hamilton County Commissioners for the maintenance of Hamilton County-owned bridges located within the City (the “Bridge Maintenance Agreement”). Pursuant to the Bridge Maintenance Agreement, the City may receive annual Municipal Road Fund allocations of up to \$1,000,000. In Ordinance No. 0234-2018, the City Council authorized the City Manager to accept and appropriate annual Municipal Road Fund allocations of up to \$1,000,000 from program years 2017 through 2021. On March 30, 2022, the City and Hamilton County exercised their option to extend the Bridge Maintenance Agreement through December 31, 2026.

There are no new FTEs/full-time equivalents associated with accepting additional Municipal Road Fund allocations for program years 2022 through 2026.

Maintaining and repairing bridges and viaducts located within the City of Cincinnati is in accordance with the “Connect” goal to “[d]evelop a regional transportation system that promotes economic vitality” and strategy to “[p]lan, design and implement a safe and sustainable transportation system” as described on pages 129-138 of Plan Cincinnati (2012).

The reason for the emergency is the immediate need to accept and appropriate the 2022-2026 MRF Allocations to begin maintenance and repair work pursuant to the Bridge Agreement.

The Administration recommends passage of this Emergency Ordinance.

cc: Andrew M. Dudas, Budget Director  
Karen Alder, Finance Director



Attachment

## EMERGENCY

IMD

- 2023

**ESTABLISHING** new capital improvement program project account no. 980x233x242367, “Maintenance Fund for Bridges 2022-2026,” for the purpose of maintaining and repairing Hamilton County-owned bridges and viaducts located within the City; **AUTHORIZING** the City Manager to accept and appropriate annual Municipal Road Fund allocations of up to \$1,000,000 from the Board of Hamilton County Commissioners, totaling up to \$5,000,000 for program years 2022 through 2026 (the “2022-2026 MRF Allocations”), in accordance with the bridge maintenance agreement entered into between the City and Hamilton County; and **AUTHORIZING** the Finance Director to deposit the 2022-2026 MRF Allocations into capital improvement program project account no. 980x233x242367, “Maintenance Road Fund for Bridges 2022-2026.”

WHEREAS, pursuant to Ordinance No. 69-2017, Council authorized the City Manager to enter into an agreement with the Board of Hamilton County Commissioners for the maintenance of Hamilton County-owned bridges located within the City (the “Bridge Maintenance Agreement”); and

WHEREAS, pursuant to the Bridge Maintenance Agreement, the City may receive annual Municipal Road Fund allocations of up to \$1,000,000; and

WHEREAS, pursuant to Ordinance No. 234-2018, Council authorized the City Manager to accept and appropriate annual Municipal Road Fund allocations of up to \$1,000,000 from Hamilton County, totaling up to \$5,000,000 for program years 2017 through 2021; and

WHEREAS, on March 30, 2022, the City and Hamilton County exercised their option to extend the Bridge Maintenance Agreement through December 31, 2026; and

WHEREAS, there are no new FTEs/full-time equivalents associated with accepting additional Municipal Road Fund allocations for program years 2022 through 2026; and

WHEREAS, maintaining and repairing bridges and viaducts located within the City of Cincinnati is in accordance with the “Connect” goal to “[d]evelop a regional transportation system that promotes economic vitality” and strategy to “[p]lan, design and implement a safe and sustainable transportation system” as described on pages 129-138 of Plan Cincinnati (2012); now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That new capital improvement program project account no. 980x233x242367, “Maintenance Fund for Bridges 2022-2026,” is established for the purpose of maintaining and repairing Hamilton County-owned bridges and viaducts located within the City.



Section 2. That the City Manager is authorized to accept and appropriate annual Municipal Road Fund allocations of up to \$1,000,000 from the Hamilton County Board of County Commissioners, totaling up to \$5,000,000 for program years 2022 through 2026 (the “2022-2026 MRF Allocations”), in accordance with the bridge maintenance agreement between the City and Hamilton County (the “Bridge Agreement”).

Section 3. That the Finance Director to is authorized to deposit the 2022-2026 MRF Allocations into capital improvement program project account no. 980x233x242367, “Maintenance Fund for Bridges 2022-2026.”

Section 4. That the proper City officials are authorized to do all things necessary and proper to comply with the terms of the Bridge Agreement and Sections 1 through 3.

Section 5. That the proper City officials are hereby authorized to use and expend the sum of \$5,000,000 in accordance with the provisions of Sections 1 through 4.

Section 6. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to accept and appropriate the 2022-2026 MRF Allocations to begin maintenance and repair work pursuant to the Bridge Agreement.

Passed: \_\_\_\_\_, 2023

\_\_\_\_\_  
Aftab Pureval, Mayor

Attest: \_\_\_\_\_  
Clerk

September 7, 2023

**To:** Mayor and Members of City Council

202301962

**From:** Sheryl M. M. Long, City Manager

**Subject: Ordinance – Parks: Various Parks Donations for Capital Projects**

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Attached is an Ordinance captioned:

**AUTHORIZING** the City Manager to accept a donation of up to \$338,400 from the Cincinnati Park Board Commissioners’ Fund to fund various activities set forth herein; **AUTHORIZING** the Director of Finance to deposit the donated funds into Parks Private Endowment and Donations Fund 430; **AUTHORIZING** the transfer and appropriation of \$220,000 from Parks Private Endowment and Donations Fund 430 to existing capital improvement program project account no. 980x203x182015, “Lytle Park Improvements,” to renovate the comfort station, update and augment the lighting along 4th Street, and enact a safety bump out in the curb that will improve pedestrian safety and accessibility to the improved corridor at Lytle Park; **AUTHORIZING** the transfer and appropriation of \$73,850 from Parks Private Endowment and Donations Fund 430 to existing capital improvement program project account no. 980x203x222011, “Smale Riverfront Park Water Feature Repairs,” to restore the Pichler Fountain recirculation tank; **AUTHORIZING** the transfer and appropriation of \$44,550 from Parks Private Endowment and Donations Fund 430 to existing capital improvement program project account no. 980x203x232035, “Burnet Woods Dog Park,” for the development of the Burnet Woods Dog Park; and **AUTHORIZING** the transfer and appropriation of \$180,000 from the unappropriated surplus of Cincinnati Riverfront Park Fund 329 to existing capital improvement program project account no. 980x203x222011, “Smale Riverfront Park Water Feature Repairs,” to restore the Pichler Fountain recirculation tank.

Approval of this Ordinance will authorize the acceptance and deposit of \$338,400 from the Cincinnati Park Board Commissioners’ Fund to Parks Private Endowment and Donations Fund 430.

This Ordinance also authorizes the transfer and appropriation of resources in the following sums from the Parks Private Endowment and Donations Fund 430:

- \$220,000 to 980x203x182015, “Lytle Park Improvements”
- \$73,850 to 980x203x222011, “Smale Riverfront Park Water Feature Repairs”
- \$44,550 to 980x203x232035, “Burnet Woods Dog Park”

In addition, this Ordinance authorizes the transfer and appropriation of \$180,000 from the unappropriated surplus of Cincinnati Riverfront Park Fund 329 to existing capital improvement program project account no. 980x203x222011, “Smale Riverfront Park Water Feature Repairs.”

There are no new FTEs associated with the donations.

Providing resources for Lytle Park, Smale Riverfront Park, and Burnet Woods is in accordance with the “Collaborate” goal to “[w]ork in synergy with the Cincinnati community” as described on pages 207-212 of Plan Cincinnati (2012).

The Administration recommends passage of this Ordinance.

cc: Andrew M. Dudas, Budget Director  
Karen Alder, Finance Director



Attachment

**AUTHORIZING** the City Manager to accept a donation of up to \$338,400 from the Cincinnati Park Board Commissioners' Fund to fund various activities set forth herein; **AUTHORIZING** the Director of Finance to deposit the donated funds into Parks Private Endowment and Donations Fund 430; **AUTHORIZING** the transfer and appropriation of \$220,000 from Parks Private Endowment and Donations Fund 430 to existing capital improvement program project account no. 980x203x182015, "Lytle Park Improvements," to renovate the comfort station, update and augment the lighting along 4th Street, and enact a safety bump out in the curb that will improve pedestrian safety and accessibility to the improved corridor at Lytle Park; **AUTHORIZING** the transfer and appropriation of \$73,850 from Parks Private Endowment and Donations Fund 430 to existing capital improvement program project account no. 980x203x222011, "Smale Riverfront Park Water Feature Repairs," to restore the Pichler Fountain recirculation tank; **AUTHORIZING** the transfer and appropriation of \$44,550 from Parks Private Endowment and Donations Fund 430 to existing capital improvement program project account no. 980x203x232035, "Burnet Woods Dog Park," for the development of the Burnet Woods Dog Park; and **AUTHORIZING** the transfer and appropriation of \$180,000 from the unappropriated surplus of Cincinnati Riverfront Park Fund 329 to existing capital improvement program project account no. 980x203x222011, "Smale Riverfront Park Water Feature Repairs," to restore the Pichler Fountain recirculation tank.

WHEREAS, the Cincinnati Park Board Commissioners' Fund consists of funds received from endowments and donations from various entities to support the Cincinnati Park Board; and

WHEREAS, acceptance of a donation of \$338,400 from the Cincinnati Park Board Commissioners' Fund will help fund a variety of activities to further the Park Board's goals, including improvements to Lytle Park, restoration of the Pichler Fountain recirculation tank, and a dog park in Burnet Woods; and

WHEREAS, sufficient resources are available in the Cincinnati Riverfront Park Fund 329 to cover the appropriation of \$180,000; and

WHEREAS, there are no new FTEs associated with this donation of resources; and

WHEREAS, providing resources for Lytle Park, Smale Riverfront Park, and Burnet Woods is in accordance with the "Collaborate" goal to "[w]ork in synergy with the Cincinnati community" as described on pages 207-212 of Plan Cincinnati (2012); now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City Manager is hereby authorized to accept up to \$338,400 from the Cincinnati Park Board Commissioners' Fund to fund various activities set forth herein.

Section 2. That the Director of Finance is authorized to deposit the donated funds into Parks Private Endowment and Donations Fund 430.

Section 3. That the transfer and appropriation of \$220,000 from Parks Private Endowment and Donations Fund 430 to existing capital improvement program project account no. 980x203x182015, "Lytle Park Improvements," is authorized to renovate the comfort station, update and augment the lighting along 4th Street, and enact a safety bump out in the curb that will improve pedestrian safety and accessibility to the improved corridor at Lytle Park.

Section 4. That the transfer and appropriation of \$73,850 from Parks Private Endowment and Donations Fund 430 to existing capital improvement program project account no. 980x203x222011, "Smale Riverfront Park Water Feature Repairs," is authorized to restore the Pichler Fountain recirculation tank.

Section 5. That the transfer and appropriation of \$44,550 from Parks Private Endowment and Donations Fund 430 to existing capital improvement program project account no. 980x203x232035, "Burnet Woods Dog Park," is authorized for the development of the Burnet Woods Dog Park.

Section 6. That the transfer and appropriation of \$180,000 from the unappropriated surplus of Cincinnati Riverfront Park Fund 329 to existing capital improvement program project account no. 980x203x222011, "Smale Riverfront Park Water Feature Repairs," is authorized to restore the Pichler Fountain recirculation tank.

Section 7. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of Sections 1 through 6.

Section 8. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: \_\_\_\_\_, 2023

\_\_\_\_\_  
Aftab Pureval, Mayor

Attest: \_\_\_\_\_  
Clerk



September 7, 2023

202301955

**To:** Mayor and Members of City Council  
**From:** Sheryl M. M. Long, City Manager  
**Subject:** **Emergency Ordinance – Authorizing Purchase of Paper Products for Employees**

---

Attached is an Emergency Ordinance captioned:

**AUTHORIZING** the expenditure of funds for purchasing inexpensive paper products, such as paper plates and bowls, disposable cups, paper towels, tissues, napkins, and cutlery, and cleaning supplies such as dish soap, dish sponges, and sanitizer for use by City employees while at work at City facilities; **AUTHORIZING** the City Manager to establish rules and regulations specifying the circumstances in which the City may expend funds for such purposes, as well as controls to ensure the appropriate expenditure of such funds; and further **DECLARING** that such expenditures serve a public purpose.

The reason for the emergency is the immediate need to permit expenditure of funds for the purposes identified in this ordinance to promote employee health and morale, support operational efficiency, and maintain clean and sanitary City facilities.

The Administration recommends passage of this Emergency Ordinance.

cc: William “Billy” Weber, Assistant City Manager  
Virginia Tallent, Assistant City Manager

## EMERGENCY

CMZ

- 2023

**AUTHORIZING** the expenditure of funds for purchasing inexpensive paper products, such as paper plates and bowls, disposable cups, paper towels, tissues, napkins, and cutlery, and cleaning supplies such as dish soap, dish sponges, and sanitizer for use by City employees while at work at City facilities; **AUTHORIZING** the City Manager to establish rules and regulations specifying the circumstances in which the City may expend funds for such purposes, as well as controls to ensure the appropriate expenditure of such funds; and further **DECLARING** that such expenditures serve a public purpose.

WHEREAS, many City employees work at locations where options for getting food for their meal breaks, especially healthy or reasonably priced food, are limited and inconvenient to their work location; and

WHEREAS, many City employees also work extended shifts or for City departments that operate 24 hours a day, such as public safety, MSD, GCWW, and Public Services, and therefore must bring food for meals to their work locations; and

WHEREAS, facilitating employees' options to bring meals to work and eat at their work location promotes employee morale and health and also minimizes the likelihood of unanticipated delays during the workday because employees had to leave their work location to get meals, promoting the efficient conduct of City business; and

WHEREAS, providing inexpensive paper products, such as paper plates and bowls, disposable cups, paper towels, tissues, napkins, and cutlery, and cleaning supplies such as dish soap, dish sponges, and sanitizer promotes and demonstrates management support of employees who eat at their work location; and

WHEREAS, providing disposable paper products and supplies to wash dishes employees bring to their work locations promotes employees' health by minimizing germs in areas where employees eat and limits food waste that might attract insects and vermin; and

WHEREAS, protecting the health of City employees by providing them with these products serves a public purpose by reducing the number of sick days employees have to take and by minimizing the spread of germs and illness and the incidence of insect or vermin infestation at City facilities; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the expenditure of funds for the provision of inexpensive paper or disposable products such as paper plates and bowls, disposable cups, paper towels, tissues, napkins, and cutlery, and cleaning supplies such as dish soap, dish sponges, and sanitizer for use



by City employees while at work at City facilities is authorized, for the purpose of facilitating the efficient conduct of City business and promoting employee health and morale.

Section 2. That the City Manager is authorized to establish rules and regulations specifying the circumstances in which funds may be expended pursuant to the authorization in Section 1, as well as controls to ensure the appropriate expenditure of such funds.

Section 3. That the expenditure of funds for the purposes described in Section 1 serves a public purpose by facilitating the efficient conduct of City business, promoting employee health and morale, and keeping City facilities clean.

Section 4. That the proper City officials are authorized to do all things necessary and proper to comply with the provisions of Sections 1 and 2.

Section 5. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to permit expenditure of funds for the purposes identified in this ordinance to promote employee health and morale, support operational efficiency, and maintain clean and sanitary City facilities.

Passed: \_\_\_\_\_, 2023

\_\_\_\_\_  
Aftab Pureval, Mayor

Attest: \_\_\_\_\_  
Clerk

**September 7, 2023**

**To:** Mayor and Members of City Council

202301980

**From:** Sheryl M. M. Long, City Manager

**Subject: Emergency Ordinance – Chapter 324**

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Attached is an Emergency Ordinance captioned:

**REPEALING** existing Chapter 324, “Minority and Women Business Enterprise Program,” of the Cincinnati Municipal Code, and **ORDAINING** in its place new Chapter 324, “Minority and Women Business Enterprise Program.”

The Administration recommends passage of this Emergency Ordinance.

cc: Laura Castillo, Interim Director, Economic Inclusion  
Virginia Tallent, Assistant City Manager

**EMERGENCY**

**CMZ**

**- 2023**

**REPEALING** existing Chapter 324, “Minority and Women Business Enterprise Program,” of the Cincinnati Municipal Code, and **ORDAINING** in its place new Chapter 324, “Minority and Women Business Enterprise Program.”

WHEREAS, existing CMC Chapter 324 was ordained effective January 1, 2016 based on the findings of a disparity study that analyzed the historical procurements of the City during the five-year period January 1, 2009 through December 31, 2013; and

WHEREAS, under the standards established by the United States Supreme Court, public minority business enterprise (“MBE”) and women business enterprise (“WBE”) programs must have a sunset date; and

WHEREAS, existing Chapter 324 automatically will expire on October 2, 2023; and

WHEREAS, under the standards established by the United States Supreme Court, the continuation of public MBE and WBE programs must be narrowly tailored to remedy the disparities identified by a relatively recent disparity study; and

WHEREAS, a new disparity study was conducted by Griffin & Strong, PC to analyze the City’s historical procurements during a more current five-year period from January 1, 2016 through December 31, 2020; and

WHEREAS, the Final Disparity Report dated February 2023 (the “Disparity Study Report”) identified statistically significant disparities in the participation of MBEs and WBEs in City contracts that differ in some respects from the statistically significant disparities identified by the previous study, which analyzed an earlier period of City procurements; and

WHEREAS, the statistically significant disparities identified by the Disparity Study Report require adjustments to current MBE and WBE programs, including the addition of Hispanic American-owned firms to those eligible for MBE certification, the narrow tailoring of eligibility of Asian American-owned firms and African American-owned firms for MBE certification, and the narrow tailoring of eligibility for WBE certification to non-minority, women-owned firms; and

WHEREAS, there is a compelling governmental interest in ensuring opportunities for full and fair participation of all segments of the business community in the City’s relevant geographic market area, including MBEs and WBEs, in City contracts; and

WHEREAS, the Disparity Study Report included recommendations for both race- and gender-neutral and race- and gender-conscious remedies for the identified statistically significant disparities in the participation of MBEs and WBEs in City contracts; and

WHEREAS, it is the desire of Council to remedy the statistically significant disparities in the utilization of MBEs and WBEs in City contracts for construction, professional services including architectural and engineering services, other services, and supplies through both race- and gender-neutral programs and narrowly tailored race- and gender-conscious programs designed to permit full and fair participation of MBEs and WBEs; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That existing Chapter 324, “Minority and Women Business Enterprise Program,” of the Cincinnati Municipal Code, scheduled to expire on October 2, 2023, is hereby repealed effective as of October 1, 2023.

Section 2. That the following Chapter 324, “Minority and Women Business Enterprise Program,” of the Cincinnati Municipal Code is hereby ordained effective as of October 1, 2023:

### **Chapter 324 MINORITY AND WOMEN BUSINESS ENTERPRISE PROGRAM**

#### **Sec. 324-1. Definitions.**

For the purpose of this chapter, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them, unless a different meaning is clearly indicated by the context.

#### **Sec. 324-1-A. Affiliation; Affiliate.**

“Affiliation” and “affiliate” shall have the same meaning as provided in section 323-1-A of the Cincinnati Municipal Code or its successor.

#### **Sec. 324-1-A1. African American.**

“African American” means a U.S. citizen or lawfully admitted permanent resident whose ancestry originates from any of the black racial groups of Africa.

#### **Sec. 324-1-A2. Asian American.**

“Asian American” means a U.S. citizen or lawfully admitted permanent resident whose ancestry originates from the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

**Sec. 324-1-B. Bid.**

“Bid” shall have the same meaning as provided in section 321-1-B1 of the Cincinnati Municipal Code or its successor.

**Sec. 324-1-B1. Board.**

“Board” shall mean the Certification Appeals Board.

**Sec. 324-1-C. Certification.**

“Certification” or “recertification” shall mean a minority business enterprise (“MBE”) or women business enterprise (“WBE”) that meets the qualification criteria set forth in this chapter and in the rules and regulations promulgated under the authority of this chapter for participation in the MBE or WBE programs in the appropriate construction, professional services, other services, or supplies category for which the contract is being awarded and is formally approved by the director or the director’s designee as having met such criteria. Certification or recertification relates to qualifications regarding ownership and control of the business and not the quality of the service or product offered.

**Sec. 324-1-C1. Cincinnati Market Area.**

“Cincinnati market area,” as determined by the disparity study report dated February 2023, includes all of Hamilton County, Ohio and is the area in which firms must have an operating office in order to be considered for certification as an MBE or WBE.

**Sec. 324-1-C2. City Purchasing Agent.**

“City purchasing agent” shall have the same meaning as provided in section 321-1-C of the Cincinnati Municipal Code or its successor.

**Sec. 324-1-C3. Commercially Useful Function.**

“Commercially useful function” shall have the same meaning as provided in section 323-1-C2 of the Cincinnati Municipal Code, or its successor, except that the phrase “MBE or WBE” shall be substituted for the phrase “SBE, SLBE or ELBE” wherever those terms appear in the definition.

**Sec. 324-1-C4. Compliance.**

“Compliance” shall mean a determination by the director that a utilization plan for MBE and WBE participation in a particular contract complies with this chapter, that the contractor has managed the contract as provided in the MBE/WBE utilization plan, and that the contractor or prospective contractor has otherwise complied with this chapter.

**Sec. 324-1-C5. Construction.**

“Construction” shall have the same meaning as provided in section 323-1-C4 of the Cincinnati Municipal Code or its successor.

**Sec. 324-1-C6. Contract.**

“Contract” shall mean a contract in excess of \$50,000, except contracts listed by the city purchasing agent as exempt and approved by the city manager, for:

- (a) Construction;
- (b) Professional Services;
- (c) Services; or
- (d) Supplies.

**Sec. 324-1-C7. Contract Participation Goals.**

“Contract participation goals” shall mean the actual commitment made by an awarded vendor to utilize MBE and WBE firms in the performance of the work, as determined by the director upon review and verification of the information on the subcontractor utilization plan submitted with the awarded vendor’s bid or response to an RFP or RFQ. The contract participation goals shall be incorporated into the awarded vendor’s contract.

**Sec. 324-1-C8. Contracting Agency.**

“Contracting agency” shall mean the City agency, department, independent board, or authorized representative that issues an invitation to bid, RFP, or RFQ.

**Sec. 324-1-C9. Contractor.**

“Contractor” shall mean an individual, joint venture, or legal entity with a written agreement to provide goods or services to the city.

**Sec. 324-1-C10. Control.**

“Control,” as it relates to the control of a business by owners who are members of a minority group or women, means that such minority or women owners:

- (a) Possess and actively and continuously exercise the legal authority and power to direct or cause the direction of the management and policies of the business and to make day-to-day and long-term decisions for the business on matters of management, policy, and operations;
- (b) Are not subject to any formal or informal restrictions that limit the discretion customarily within the purview of a business owner; and
- (c) Are not restricted, whether by agreement, by-laws, resolutions, or other arrangements, from making business decisions without the cooperation or vote of any owner who is not a minority or a woman.

**Sec. 324-1-D. Department.**

“Department” shall mean the department of economic inclusion.

**Sec. 324-1-D1. Director.**

“Director” shall mean the director of the department of economic inclusion or the director’s designee.

**Sec. 324-1-D2. Disparity Study.**

“Disparity study” means the study undertaken by Griffin & Strong, P.C. that statistically analyzed the City of Cincinnati prime contracts and subcontracts during the period January 1, 2016 through December 31, 2020 to evaluate the use of willing and able minority- and women-owned business enterprises and that is reflected in a final report dated February 2023.

**Sec. 324-1-G. Good Faith Efforts.**

“Good faith efforts” means the documented efforts of bidders, respondents, and contractors, as applicable, proactively to take all reasonably necessary steps to achieve the MBE and WBE solicitation goals or the MBE and WBE contract participation goals, as applicable. In determining whether a bidder, respondent, or contractor made good faith efforts to achieve the applicable MBE and WBE solicitation goals or MBE and WBE contract participation goals, the director shall consider:

- (a) Evidence of timely attempts and follow-ups, using all reasonable and available means, to solicit all MBE and WBE firms certified by the city to provide goods or services under the applicable commodity codes for which subcontracting opportunities exist;
- (b) Evidence of the unbundling of work into economically feasible components or units to facilitate MBE and WBE participation and solicitation of the work in its unbundled form;
- (c) Evidence that interested MBE and WBE firms were provided adequate and timely information about the plans, specifications, and requirements of the contract to enable them to submit thorough bids or proposals in response to solicitations;
- (d) Evidence of good faith negotiations with interested MBE and WBE firms;
- (e) Evidence that the rejection of any MBE and WBE firms as being unqualified was based on both a thorough investigation of their capabilities and capacity to perform the work and an objective analysis; and
- (f) Evidence of efforts to assist MBE and WBE firms in obtaining bonding, lines of credit, or insurance as required by the contractor where those requirements create an obstacle to MBE and WBE participation.

Acceptable types of documentation of good faith efforts shall be identified in the rules and regulations for this chapter.

**Sec. 324-1-H. Hispanic American.**

“Hispanic American” means a U.S. citizen or lawfully admitted permanent resident whose ancestry originates from Mexico, Puerto Rico, Cuba, the Dominican Republic, Central America, South America, Spain, Portugal, or other Spanish or Portuguese culture, regardless of race.

**Sec. 324-1-I. Independent Operating Business.**

“Independent operating business” shall mean a business where ownership is direct, independent, and by individuals only. Businesses that are owned by other businesses that do not qualify under the MBE or WBE eligibility requirements shall not be eligible for certification unless the following conditions are met:

- (a) The minority or women owners own and control the business through a parent company that is a holding company, established for tax, capitalization, or other purposes consistent with industry practice, and the minority or women owners of the parent/holding company control the subsidiary through the parent/holding company; and
- (b) The cumulative ownership by the minority or women owners in the parent/holding company is at least 51 percent.

**Sec. 324-1-II. Invitation to Bid; ITB.**

“Invitation to bid” or “ITB” shall have the same meaning as provided in section 321-1-I of the Cincinnati Municipal Code or its successor.

**Sec. 324-1-J. Joint Venture.**

“Joint venture” shall have the same meaning as provided in section 323-1-J of the Cincinnati Municipal Code or its successor.

**Sec. 324-1-M. Minority Business Enterprise; MBE.**

“Minority business enterprise” or “MBE” shall mean a business that meets each of the following criteria:

- (a) Is an independent operating business;
- (b) Is a sole proprietorship that is independently owned and controlled by an individual who is a minority group member; a joint venture that is at least 51 percent independently owned and controlled by minority group members; or a partnership, limited liability company, or corporation that is at least 51 percent independently owned and controlled by minority group members;
- (c) The minority group member owners have interest in capital and earnings commensurate with the minority group members’ percentage of ownership;
- (d) Has been in operation for at least twelve months before applying for certification;
- (e) Has been at least 51 percent minority-owned for at least twelve months before applying for certification;
- (f) Has an operating office located in the Cincinnati market area; and
- (g) Performs a commercially useful function.



**Sec. 324-1-M1. Minority Group Member.**

“Minority group member” shall mean a member of the following groups for which the disparity study found a statistically significant underutilization for the following types of contracts:

- (a) For construction: African Americans and Hispanic Americans;
- (b) For professional services, including architecture and engineering: African Americans and Hispanic Americans; and
- (c) For other services: African Americans, Asian Americans, and Hispanic Americans.

**Sec. 324-1-N. Native American.**

“Native American” shall mean a U.S. citizen or lawfully admitted permanent resident whose ancestry originates from the original people of North America and who maintains cultural identification through tribal affiliation.

**Sec. 324-1-O. Operating Office.**

“Operating office” shall mean either a principal place of business or significant employee presence within the geographic limits of Hamilton County, Ohio. For purposes of this definition, “significant employee presence” shall mean 25 percent or more of a firm’s total number of full- and part-time employees are domiciled within the geographic limits of Hamilton County, Ohio.

**Sec. 324-1-P. Points.**

“Points” shall mean the quantitative assignment of value for specific response evaluation criteria in the contractor selection process initiated by a request for proposal.

**Sec. 324-1-P1. Prime Contractor.**

“Prime contractor” shall mean the vendor or contractor to which a purchase order or contract is issued by the city for purposes of providing construction, professional services, other services, or supplies to the city.

**Sec. 324-1-P2. Professional Services.**

“Professional services” shall mean professional services as defined in section 321-1-P of the Cincinnati Municipal Code or its successor and shall include architectural and engineering services.

**Sec. 324-1-R. Regulations; Rules.**

“Regulations” or “rules” shall mean the regulations promulgated by the city manager pursuant to section 324-9 of this chapter.

**Sec. 324-1-R1. Request for Proposal; RFP.**

“Request for proposal” or “RFP” shall have the same meaning as provided in section 321-1-R3 of the Cincinnati Municipal Code or its successor.

**Sec. 324-1-R2. Request for Qualifications; RFQ.**

“Request for qualifications” or “RFQ” shall have the same meaning as provided in section 321-1-R4 of the Cincinnati Municipal Code or its successor.

**Sec. 324-1-S. Services.**

“Services” shall mean service as defined in section 321-1-S of the Cincinnati Municipal Code or its successor.

**Sec. 324-1-S1. Solicitation Goals.**

“Solicitation goals” shall mean the MBE and WBE participation goals established by the director in accordance with sections 324-15(a) and 324-15(b) of this chapter for advertisement as part of the specifications of an ITB, RFP, or RFQ covered by this chapter.

**Sec. 324-1-S2. Subcontractor.**

“Subcontractor” shall mean any vendor or contractor that is providing goods or services to a prime contractor in furtherance of the prime contractor’s performance under a purchase order or contract with the city.

**Sec. 324-1-S3. Subcontractor Utilization Plan.**

“Subcontractor utilization plan” shall mean a document submitted by a bidder with its bid or by a respondent to an RFP or RFQ with its response, on a form required by the director, in which the bidder or respondent commits to utilize specifically identified city-certified MBEs and/or WBEs in a percentage that equals or exceeds the applicable MBE and/or WBE solicitation goals for the contract, except as otherwise noted in this chapter.

**Sec. 324-1-S4. Supplier.**

“Supplier” shall mean a business that furnishes needed items to a contractor and either is involved in the manufacture or distribution of the supplies or materials or otherwise warehouses and ships the supplies or materials.

**Sec. 324-1-S5. Supplies.**

“Supplies” shall mean supplies as defined in section 321-1-S2 of the Cincinnati Municipal Code or its successor.

**Sec. 324-1-W. Women.**

“Women” and “woman” shall mean non-minority U.S. citizens or lawfully admitted permanent residents whose assigned gender at birth is female and those persons whose public-facing gender identity, as defined in section 914-1-G1 of the Cincinnati Municipal Code, is female and for whom the disparity study found a statistically significant underutilization for the following types of contracts: construction, professional services, other services, and supplies.

**Sec. 324-1-W1. Women Business Enterprise; WBE.**

“Women business enterprise” or “WBE” shall mean a business that meets each of the following criteria:

- (a) Is an independent operating business;
- (b) Is a sole proprietorship that is independently owned and controlled by a woman; a joint venture which is at least 51 percent independently owned and controlled by women; or a partnership, limited liability company, or corporation that is at least 51 percent independently owned and controlled by women;
- (c) The women owners have interest in capital and earnings commensurate with the women's percentage of ownership;
- (d) Has been in operation for at least twelve months before applying for certification;
- (e) Has been at least 51 percent women-owned for at least twelve months before applying for certification;
- (f) Has an operating office located in the Cincinnati market area; and
- (g) Performs a commercially useful function.

**Sec. 324-3. Rules of Construction.**

- (a) The provisions of this chapter are to be liberally construed in order to accomplish its policies and purposes.
- (b) "Must" and "shall" are mandatory terms used to express a requirement or to impose a duty.
- (c) "Must not," "may not," and "no" are mandatory negative terms used to establish a prohibition.
- (d) All provisions of this chapter are severable. If a court determines that a word, phrase, clause, sentence, paragraph, subsection, section, or other provision is invalid or that the application of any part of the same to any person or circumstances is invalid, the remaining provisions and the application of those provisions to other persons or circumstances shall remain in full force and effect to the maximum extent practicable.
- (e) Unless otherwise specified, the first day of a designated period of time is not to be counted. The last day of a period of time is to be counted unless it is a Saturday, Sunday, or legal holiday observed by the city of Cincinnati.

**Sec. 324-5. Legislative Findings, Policy, and Purpose.**

- (a) The council of the city of Cincinnati finds, based on the disparity study, that:
  - (1) There is evidence of disparities in the city's utilization of MBEs and WBEs in city purchasing and contracting;
  - (2) There is evidence of the existence in the Cincinnati market area of discriminatory practices and attitudes that impede the full and fair participation of MBEs and/or WBEs

as prime contractors in city contracts for construction, professional services, other services, and supplies;

- (3) There is evidence of discrimination in the city's contracting process by prime contractors against MBEs and WBEs resulting in the underutilization of MBEs and WBEs as subcontractors in contracts awarded by the city of Cincinnati;
  - (4) It is in the best interest of the city to adopt measures to eliminate barriers that prohibit full and fair participation of MBEs and WBEs in city contracts;
  - (5) Race- and gender-neutral remedies alone will not adequately remedy existing disparities in city contracting, as evidenced by the fact that the city has had a race- and gender-neutral program for small business enterprises since 1999 and the disparity study found that MBEs and WBEs continue to be underutilized; and
  - (6) Race- and gender-conscious remedies also are necessary to provide opportunities for full and fair participation of MBEs and WBEs in city contracts.
- (b) It is the policy of the city of Cincinnati to promote equal business opportunity in the city's contracting process by ensuring full and equitable participation by MBEs and WBEs in the provision of construction, professional services, other services, and supplies to the city on a contractual basis. This policy is intended to further the city's compelling interest in stimulating economic development through the support and empowerment of all segments of the local business community.
- (c) The purpose of the MBE and WBE program is to provide a necessary race- and gender-conscious tool for the city to use, along with its race- and gender-neutral programs, to ensure that all segments of its local business community have a reasonable and significant opportunity to participate in city contracts. The program shall be regularly evaluated using accumulated availability and utilization data to determine whether specific program provisions may require modification, expansion, or curtailment during the effective period of this chapter.

**Sec. 324-7. Scope and Effective Period of Chapter.**

- (a) This chapter applies to all contracts for construction, professional services, other services, and supplies valued in excess of \$50,000 for which a contractor provides such goods or services to the city.
- (b) This chapter shall remain in effect through October 1, 2028 and shall expire automatically on October 2, 2028 unless, prior to that time, the council of the city of Cincinnati, after authorizing an appropriate study to be undertaken and conducting public hearings, finds that statistically significant disparity continues to exist and extends the effective period of this chapter for up to an additional five years.

**Sec. 324-9. Rules and Regulations.**

The city manager shall issue and enforce rules and regulations to carry out the meaning and purpose of the MBE and WBE program authorized by this chapter.

**Sec. 324-11. MBE and WBE Certification.**

(a) *Requirements.* To be eligible for certification as an MBE, each applicant must meet the definition of an MBE in section 324-1-M of this chapter. To be eligible for certification as a WBE, each applicant must meet the definition of a WBE in section 324-1-W1 of this chapter.

(b) *Certification Process.*

(1) A business seeking certification as an MBE or WBE must:

(A) Submit an application to the department on the prescribed form, affirming under penalty of perjury that the business qualifies as a city of Cincinnati MBE or WBE as those terms are defined in section 324-1-M or section 324-1-W1 of this chapter, respectively; and

(B) If requested by the department, provide any and all materials and information necessary to demonstrate active participation in the control, operation, and management of the business.

(2) The department will review and evaluate applications and may reject an application based on one or more of the following:

(A) The applicant does not meet the requirements of the definition of an MBE or WBE, as applicable;

(B) The application is not complete;

(C) The application contains false information; or

(D) The applicant has not provided materials or information requested by the director.

(3) The director will make a certification determination within ninety days after the date the city receives a satisfactorily completed application from the applicant. If certification is denied, the director will notify the applicant in writing and specify the reason(s) for the denial.

(4) Firms certified as an MBE or WBE by other public or private agencies must also be certified under this chapter regardless of other certification. The city manager may provide by rules and regulations for an expedited or summary process for certification by the city if the business has a current MBE or WBE certification from agencies specifically identified in those rules and regulations and shall provide for such expedited or summary process for certification as may be required by state or federal law.

- (c) *Period of Certification.* The certification is valid for a two-year period beginning on the date the city certifies the applicant as an MBE or WBE.
- (d) *Recertification.* Prior to expiration of the two-year certification period, a business that desires recertification must return a completed recertification form as provided by the city and comply with the requirements of subsections (b)(1)(A) and (b)(1)(B) of this section.
- (e) *Revocation of Certification.*
  - (1) The director shall revoke the certification of a business if it is determined that the business was certified in error; the business no longer meets the definition of an MBE or WBE, as applicable; or the business fails to provide requested information in connection with a certification review conducted by the department.
  - (2) The director shall permanently revoke the certification of a business if it is determined that the certification was fraudulently obtained or that the firm allows its certified MBE or WBE status to be fraudulently used to obtain economic benefits for a firm that is not a city-certified MBE or WBE or for the owners of a firm that is not a city-certified MBE or WBE.
  - (3) The director shall provide the MBE or WBE with written notice of the revocation of certification, subject to the right to request reconsideration and to request a hearing as provided in section 324-35 of this chapter.
  - (4) In addition to certification revocation, any participant in the fraudulent use of city-certified MBE or WBE status for the benefit of another person or entity that is not a city-certified MBE or WBE shall be guilty of a first degree misdemeanor, punishable by imprisonment for up to six months and/or a fine of up to \$1,000.
- (f) *Certification Reviews.* The department will conduct random certification reviews of certified businesses by auditing them to verify that the information submitted by a business is accurate and that the business remains eligible after certification has been granted. Certification reviews may be conducted for any business for which the city determines a certification review is warranted. Businesses subject to certification reviews must provide the department with any information requested to verify the certification eligibility of the business within seven days of the department's request. Audits may include one or more of the following as reasonably necessary to ensure that all eligibility standards are satisfied:
  - (1) Business owner interviews;
  - (2) Employee and/or subcontractor interviews;
  - (3) Interviews with bidders, contractors, vendors, or suppliers involved in a joint venture or contractual relationship with the MBE or WBE;

- (4) Interviews with any other person who may have knowledge or relevant information relating to a business enterprise's eligibility for certification as an MBE or WBE;
- (5) Record and document review; or
- (6) Job site inspection.

(g) *Joint Ventures.*

- (1) On a contract-by-contract basis, a city-certified MBE or WBE may apply for certification of a joint venture with another MBE or WBE or with a non-MBE or non-WBE firm.
- (2) The MBE or WBE joint venture participant must be certified by the city in the area of work to be undertaken as a participant in the joint venture.
- (3) A holding company cannot be an MBE or WBE participant in a joint venture.
- (4) The MBE or WBE participant in the joint venture must not be an affiliate of the non-MBE or non-WBE firm.
- (5) The joint venture must have a business structure set forth in a signed written agreement that clearly and specifically defines the participation of each party in the contribution of property, capital, efforts, skills, and knowledge.
- (6) The city-certified MBE or WBE participant in the joint venture must have an interest in the control, management, risks, and operation of the joint venture commensurate with the MBE's or WBE's percentage of participation in the joint venture, and the profit or loss of the joint venture should be distributed between the participants in proportion to their respective interests in the joint venture.
- (7) The city-certified MBE or WBE that is a participant in the joint venture must be responsible for a distinct, clearly defined portion of the work to be performed with its own forces, equal to its share in the ownership, control, and management of the joint venture.
- (8) The certification of a joint venture will be limited to the duration of the contract for which certification as a joint venture was requested and shall terminate upon the earlier of completion of the city contract for which the joint venture was formed or the expiration without renewal or the revocation of certification of the MBE or WBE participant.

**Sec. 324-13. Annual Participation Goals for the MBE/WBE Program.**

- (a) By July 30 of each year, the director, in consultation with the city purchasing agent, shall review and establish the participation goals for MBEs and WBEs in city contracts.

- (b) The purpose of the annual review is to aid the city in its evaluation of the effectiveness of the MBE and WBE program and to identify areas in which the program may need to be modified in order to meet the stated purpose of the program.
- (c) The annual participation goals are not and may not be treated as mandatory quotas.
- (d) By July 30 of each year, the director shall review MBE and WBE participation on all contracts and procurements covered by this chapter to determine the city's progress toward meeting the annual goals, and the director shall report the findings to the city manager.

**Sec. 324-15. MBE and WBE Participation Goals.**

- (a) (1) Except as provided in section (a)(2) below, the director, in consultation with the city purchasing agent and/or the contracting agency, must establish appropriate goals for MBE and/or WBE participation on each specific solicitation for a contract covered by this chapter or determine that a contract is not appropriate for the MBE/WBE program.
- (2) The director may establish standard solicitation goals for MBE and WBE participation to be used for solicitations of specifically identified construction, professional services, or other services the city solicits regularly and repetitively and that also involve the same components of work in substantially the same proportion to the overall value of the contract.
  - (A) The director, in consultation with the city purchasing agent, shall consider the following in determining which, if any, repetitive construction, professional services, or other services contracts are appropriate for standard solicitation goals:
    - (i) The historical volume and frequency of the solicitations for those services;
    - (ii) The consistency in availability of city-certified MBEs and WBEs to perform the various components of the work; and
    - (iii) The consistency of MBE and WBE participation historically achieved under city contracts for those services.
  - (B) The standard solicitation goals will apply to all solicitations for those identified construction, professional services, or other services until the goals are reassessed by the director. The director shall reassess the standard solicitation goals, including the continued appropriateness for establishing standard solicitation goals for those services, at least quarterly.
- (b) The director must consider each of the following elements in determining the appropriateness of including a contract solicitation in the MBE and WBE program and setting the solicitation goals:



- (1) The availability in the particular industry classification and industry of the MBEs and WBEs that are qualified and willing to provide goods, expertise, and services required by the contract;
  - (2) The level of utilization of MBEs and WBEs in past contracts awarded by the city;
  - (3) The contract specifications;
  - (4) The extent of any adverse impact on non-MBEs and non-WBEs; and
  - (5) Any other factor deemed by the director to be relevant to the determination.
- (c) Once established, the MBE and WBE solicitation goals must be clearly published as part of the contract specifications in the invitation to bid or in the RFP or RFQ.
- (d) The MBE and WBE participation goals specified in the awarded vendor's contract shall be the contract participation goals determined by the director and as defined in section 324-1-C7 of this chapter. The MBE and WBE contract participation goals may be greater than, equal to, or, only in accordance with section 324-22(b)(2)(B) of this chapter, less than the MBE and WBE solicitation goals. The MBE and WBE contract participation goals shall apply to the initial contract amount, to any alternates, and to all subsequent amendments, supplements, extra work orders, change orders, or other modifications that, either individually or in the aggregate, increase the dollar value of the contract by ten percent or more.

**Sec. 324-17. Contracting Agency Duties; Unbundling Contracts.**

- (a) Every contracting agency must ensure that invitations to bid, RFPs, or RFQs originating with the contracting agency comply with this chapter.
- (1) All invitations to bid, RFPs, or RFQs must include a requirement that, if an MBE or WBE solicitation goal is applicable, the bidder or respondent must:
    - (A) Make good faith efforts before the opening of bids or deadline for the submission of proposals to meet the applicable contract participation goal; and
    - (B) Keep records of its good faith efforts adequate to permit a determination of compliance with this chapter.
  - (2) Each contract must require the contractor during the term of the contract to:
    - (d) Fulfill the MBE and WBE contract participation goals and the subcontracting commitments specified in the subcontractor utilization plan submitted with the bid or response;
    - (B) Continue to make good faith efforts to utilize certified MBEs and WBEs in the performance of the contract;

- (C) Maintain records reasonably necessary for monitoring compliance with this chapter;
  - (D) Make payments to its subcontractors in accordance with section 319-9 of the Cincinnati Municipal Code or its successor; and
  - (E) Submit copies of signed agreements with MBEs or WBEs before a notice to proceed is issued or the contractor otherwise begins providing services under the contract.
- (b) The head of each contracting agency, or the head's designee, shall be primarily responsible for achieving the goals of the MBE/WBE program and shall, on a continuing basis, review all aspects of the contracting agency's operations to assure that the purposes of the MBE/WBE program are being served.
  - (c) All contracting opportunities must be evaluated to determine whether the total requirements of a contract may be unbundled or divided into smaller contracts to provide reasonable opportunities for participation by MBEs and/or WBEs.

**Sec. 324-19. Subcontractor Utilization.**

- (a) In addition to any other applicable requirements, invitations to bid, RFPs, and RFQs must include a requirement that the bidder or respondent include in its bid or response one of the following:
  - (1) A certified MBE/WBE subcontractor utilization plan in which the bidder or respondent commits to utilize city-certified MBEs and/or WBEs in a percentage that equals or exceeds the applicable solicitation goals; or
  - (2) If a bidder or respondent is unable to meet the solicitation goals, a subcontractor utilization plan that reflects the highest MBE and WBE participation the bidder or respondent was able to achieve and documentation of its good faith efforts to meet the advertised solicitation goals.
- (b) The subcontractor utilization plan must include the following information:
  - (1) The name of each certified MBE or WBE to which the bidder or respondent intends to award a subcontract;
  - (2) Whether the subcontractor is a city-certified MBE or WBE;
  - (3) The dollar value of each subcontract;
  - (4) The scope of work to be performed under that subcontract; and
  - (5) Any other information the director requires in order to determine whether the city-certified MBE or WBE will be performing a commercially useful function or whether the contract participation goals have been satisfied.

- (c) (1) Bids are non-responsive if they do not include a certified MBE/WBE subcontractor utilization plan that meets or exceeds the solicitation goals or a subcontractor utilization plan that reflects the highest MBE and WBE participation the bidder or respondent was able to achieve and documentation of its good faith efforts to meet the solicitation goals in compliance with section 324-22(a) of this chapter prior to bid opening.
- (2) Responses to RFPs or RFQs that do not include a certified MBE/WBE subcontractor utilization plan that meets or exceeds the solicitation goals or a subcontractor utilization plan that reflects the highest MBE and WBE participation the bidder or respondent was able to achieve and documentation of its good faith efforts to meet the solicitation goals in compliance with section 324-22(a) of this chapter prior to the deadline for submission of responses may be considered only as provided in section 324-22(b) of this chapter.
- (3) The director may allow bidders and respondents to submit corrections to subcontractor utilization plans that do not meet the solicitation goals due solely to the following errors in the subcontractor utilization plan, and those bids or responses shall be deemed responsive provided the bidder or respondent corrects only these errors and returns the subcontractor utilization plan to the director within two business days following the director's notification of the error:
  - (A) Obvious mathematical errors;
  - (B) Typographical errors in a subcontractor's city certification type (MBE or WBE); or
  - (C) Errors in either firm names or firm FEIN numbers where those two pieces of information are not associated with the same firms.

No other modifications, changes, or corrections to the subcontractor utilization plan or other documentation submitted with the responses are permitted.
- (d) Each bidder or RFP or RFQ respondent is responsible for verifying that all MBEs and WBEs it identifies as MBE or WBE subcontractors on its subcontractor utilization plan have been certified by the director before bid opening or the deadline for submission of responses.
- (e) During the term of the contract, any failure to comply with the MBE or WBE contract participation goals or to utilize the MBE and WBE firms as specified in the subcontractor utilization plan submitted with the bid or response is a material breach of the contract unless the director has approved a waiver or reduction of contract participation goals and/or a request for substitution of MBE and/or WBE firms as set forth in section 324-23 of this chapter.

**Sec. 324-21. City Agency Pre-Solicitation Goal Waiver or Reduction Requests.**

- (a) A contracting agency may make a written request to the director for a waiver or reduction of the MBE and/or WBE solicitation goals established by the director before bids are solicited or RFPs or RFQs are published.

- (b) The director may grant the waiver or reduction if the director determines that either:
  - (1) The reasonable and necessary requirements of the contract make subcontracting or other participation of businesses other than the bidder or respondent infeasible; or
  - (2) There are not at least two qualified and certified MBEs or WBEs in the Cincinnati market area capable of providing the goods or services, despite feasible attempts to locate them.
- (c) If the director denies a request to waive or reduce an MBE or WBE solicitation goal, the contracting agency may appeal that denial to the city manager.

**Sec. 324-22. Vendor Good Faith Efforts to Meet Goals.**

- (a) A bidder or respondent that is unable to meet the established MBE and/or WBE solicitation goals must submit at the time of bid opening or at or before the deadline for submission of responses to an RFP or RFQ a subcontractor utilization plan that reflects the highest MBE and WBE participation the bidder was able to achieve and documentation of its good faith efforts to meet the advertised goals.
- (b) The director will review submitted documentation of good faith efforts only in the event no bid or response that is determined by the city purchasing agent to be lowest and best or most advantageous and therefore eligible for award meets the MBE or WBE contract participation goals.
  - (1) For RFPs and RFQs for which no respondent met the goals, the city purchasing agent may allow all respondents an additional three business days after notice to submit documentation of good faith efforts each made prior to the deadline for submission of responses to the RFP or RFQ. Respondents that fail to submit such documentation of good faith efforts within that period shall be nonresponsive and ineligible for award.
  - (2) The director shall evaluate each bidder's and respondent's documentation of their good faith efforts considering the factors in section 324-1-G of this chapter, and the director shall report the results of that evaluation and the maximum MBE and WBE participation achieved by each bidder and respondent to the city purchasing agent.
    - (A) A contract shall not be awarded to a bidder or respondent whose documentation does not demonstrate good faith efforts to meet the solicitation goals as determined by the director.
    - (B) If no other bidder or respondent met the solicitation goals, the city purchasing agent may award a contract to a bidder or respondent for which the director made a determination that the bidder or respondent demonstrated good faith efforts to meet the goals.

- (i) For an invitation to bid, the contract participation goals shall be those the director determined to be the maximum commitment achieved by the awarded bidder on its subcontractor approval plan.
- (ii) For an RFP or RFQ, the contract participation goals shall be the higher of the goals the director determined to be the maximum commitment achieved by the awarded respondent on its subcontractor approval plan or the goals negotiated with the awarded vendor by the city purchasing agent in consultation with the director.

**Sec. 324-23. Requests for Post-Award Waivers or Reductions of Contract Participation Goals; Substitution of MBEs or WBEs.**

- (a) After award of a contract, if the contractor is unable to meet the established MBE and/or WBE contract participation goal(s) through the use of the MBEs and WBEs specified by the contractor in the subcontractor utilization plan submitted with its bid or response, the contractor must seek a substitute certified MBE or WBE to fulfill its commitment.
  - (1) Any proposed substitution of a city-certified MBE listed on the contractor's subcontractor utilization plan with another city-certified MBE or proposed substitution of a city-certified WBE listed on the contractor's subcontractor utilization plan with another city-certified WBE shall require the written approval of the director.
  - (2) If a contractor has established the basis for a substitution to the satisfaction of the director, the contractor may seek the assistance of the director in obtaining a new applicable certified MBE or WBE as a substitute.
- (b) If, after making good faith efforts, the contractor is unable to find a qualified, city-certified MBE or WBE substitute, as applicable, that is capable of performing the work on the contract, the contractor must request a post-award waiver from the director, which, if granted, will permit the contractor to substitute another MBE or WBE that is not certified by the city or a non-MBE or non-WBE for the city-certified firm.
- (c) A request for approval of an MBE or WBE substitute or a post-award waiver must meet all of the following criteria:
  - (1) Be in writing;
  - (2) Document the reasons for the contractor's inability to meet its original MBE or WBE subcontractor utilization commitment with an MBE or WBE listed on the contractor's MBE/WBE subcontractor utilization plan; and
  - (3) Document either the name and qualifications of the proposed substitute certified MBE or WBE or the good faith efforts made to find a substitute qualified and certified MBE or WBE.

- (d) The director's decision to permit or deny a proposed substitution or waiver, and the basis of any denial, shall be communicated to the contractor, the MBE or WBE originally listed on the subcontractor utilization plan, and any proposed substitute MBE or WBE in writing.

**Sec. 324-25. Chapter Inapplicable to Sole Source, Emergency Acquisitions, Cooperative/State Procurements, and Direct Awards.**

Unless the city manager or city purchasing agent determines that application of the provisions of this chapter to a particular contract is practical and in the best interest of the city, the provisions of this chapter do not apply to a particular contract if the city purchasing agent determines:

- (a) There is only a single or sole source for the needed goods or services as provided in section 321-85, section 321-86, or any related or successor sections of the Cincinnati Municipal Code;
- (c) It is in the best interest of the city to use a direct award as provided in section 321-87 of the Cincinnati Municipal Code or its successor;
- (d) It is in the best interest of the city to procure compatible equipment accessories or replacement parts, to use the original manufacturer for supplies, to procure public utility services, or to procure supplies for trial use or testing without competition as provided in chapter 321 of the Cincinnati Municipal Code;
- (d) The city purchasing agent makes a written determination that an emergency procurement is appropriate as provided in section 321-89 of the Cincinnati Municipal Code or its successor;
- (e) It is in the best interest of the city to procure goods or services through a cooperative contract or state contract as provided in section 321-97 of the Cincinnati Municipal Code or its successor; or
- (f) The city purchasing agent and, as applicable, the city manager, determine it is in the best interest of the city to award a professional services contract without competition in accordance with city administrative regulations.

**Sec. 324-27. Counting MBE and WBE Participation.**

A bidder, a respondent to an RFP or RFQ, or a contractor may only be credited with MBE or WBE participation as follows:

- (a) Only city-certified MBEs and WBEs may be counted toward solicitation goals and only as follows:
  - (1) A certified MBE or WBE that submits a bid or proposal as a prime contractor may count 100 percent of the dollar value of the work it intends to perform with its own forces toward the applicable MBE or WBE solicitation goal.

- (2) Only businesses that were certified by the director as an MBE or WBE prior to bid opening or the deadline for submission of a response to an RFP or RFQ and were certified at that time to perform the work described in the subcontractor utilization plan submitted with the bid or response may be counted toward the applicable solicitation goal.
  - (3) Only that portion of the work to be performed by a joint venture that is equal to the percentage of the certified MBE or WBE participant's ownership, control, and identified contract performance may be counted toward the applicable MBE or WBE solicitation goal.
  - (4) The entire value of the identified utilization of a certified WBE manufacturer or a certified WBE supplier that also manufactures the goods supplied may be counted toward the WBE solicitation goal.
  - (5) Twenty-five percent of the value of the identified utilization of a certified WBE supplier that is a wholesaler warehousing the goods supplied may be counted toward the WBE solicitation goal.
  - (6) The fees or commissions charged by a certified MBE or WBE insurance company or travel agent may be counted toward the applicable solicitation goal, provided the fee is reasonable and not excessive as compared with fees or commissions customarily allowed for similar services.
  - (7) No planned utilization of a certified MBE or WBE that intends to subcontract more than ten percent of the dollar amount of the services to be performed under a subcontract with the bidder or with a respondent to an RFP or RFQ may be counted toward the applicable MBE or WBE solicitation goal. An MBE's or a WBE's necessary expenditures for the purchase of materials, equipment, or supplies that are incidental to the performance of its services shall not be counted toward this ten percent limitation.
  - (8) A certified MBE or WBE may not be counted toward the applicable MBE or WBE solicitation goal if the prime contractor has a financial interest in, has an interest in the ownership or control of, or is significantly involved in the operation of the certified MBE or WBE
- (b) Only city-certified MBEs and WBEs may be counted toward contract participation goals and only as follows:
- (1) A certified MBE or WBE awarded a contract as a prime contractor may count 100 percent of the dollar value of the work it actually performs with its own forces toward the applicable MBE or WBE contract participation goal.

- (2) Only payments to certified MBEs or WBEs that perform a commercially useful function in the performance of work for which they are certified may be counted toward the applicable contract participation goal.
  - (A) To determine whether a certified MBE or WBE is performing a commercially useful function, the director must evaluate:
    - (i) The amount of work subcontracted;
    - (ii) Industry practices;
    - (iii) Whether the amount the MBE or WBE is to be paid under the contract is commensurate with the work it actually performs and with the MBE or WBE credit claimed for its performance of the work; and
    - (iv) Any other factors deemed by the director to be relevant to the determination.
  - (B) If the director initially determines that an MBE or WBE is not performing a commercially useful function, the director shall give written notice to the MBE or WBE, and the MBE or WBE may provide written documentation to the director within seven days that evidences it is or will be performing a commercially useful function for work it has been certified by the city to perform.
  - (C) The decision of the director after submission of such additional evidence by the MBE or WBE, or seven days after written notice of the initial determination if no additional evidence is submitted, shall be final and conclusive.
- (3) Only that portion of the payment to a joint venture that is equal to the percentage of ownership, control, and contract performance of the certified MBE or WBE participant in the joint venture may be counted toward the applicable MBE or WBE contract participation goal.
- (4) The entire expenditure with a certified WBE manufacturer or a certified WBE supplier that also manufactures the goods supplied may be counted toward the WBE contract participation goal.
- (5) Twenty-five percent of the payment to a certified WBE supplier that is a wholesaler warehousing the goods supplied may be counted toward the WBE contract participation goal.
- (6) The fees or commissions charged by a certified MBE or WBE insurance company or travel agent may be counted toward the applicable contract participation goal, provided the fee is reasonable and not excessive as compared with fees or commissions customarily allowed for similar services.



- (7) No payments made to a certified MBE or WBE that subcontracts more than ten percent of the dollar amount of the services to be performed under a subcontract with the prime contractor may be counted toward the applicable MBE or WBE contract participation goal. An MBE's or a WBE's expenditures for the purchase of materials, equipment, or supplies that are incidental to the performance of its services under its subcontract shall not be counted toward this ten percent subcontracting limitation.
- (8) A certified MBE or WBE may not be counted toward the applicable MBE or WBE contract participation goal if the prime contractor has a financial interest in, has an interest in the ownership or control of, or is significantly involved in the operation of the certified MBE or WBE.

**Sec. 324-29. Prime Contractor Capacity-Building Initiatives Authorized.**

To promote the award of city contracts to city-certified MBEs or WBEs in an effort to remedy identified disparities in city prime contracts historically awarded to MBEs or WBEs, preference points may be awarded as provided in section 324-31 of this chapter to a response submitted by a city-certified MBE or WBE to an RFP or RFQ for professional services, and price preferences may be applied as provided in section 324-33 of this chapter to a bid submitted by a city-certified MBE or WBE for supplies and other services prime contracts.

**Sec. 324-31. Preference Points for Professional Services Prime Contracts.**

- (a) A city-certified MBE or WBE that submits a response to an RFP or RFQ for a professional services contract may be awarded up to ten evaluation preference points.
- (b) Preference points for joint ventures that include city-certified MBE or WBE participants must be allocated on a pro rata basis in the same proportion to which a clearly defined portion of the work to be performed by the MBE or WBE with its own forces and equal to its share in the ownership, risks, performance, management, and control of the joint venture bears to the total work to be performed under the contract.

**Sec. 324-33. Price Preferences for Other Services and Supplies Prime Contracts.**

The city may award a prime contract for other services or supplies to a city-certified MBE or WBE that submits a bid that is no more than five percent greater than the lowest and otherwise best bid unless either of the following applies:

- (a) The award to the MBE or WBE would result in a total contract cost that is, on an annual basis, \$25,000 or more higher than the lowest and otherwise best bid; or
- (b) The award to the MBE or WBE would cause the total contract cost to exceed the city's budgeted funding for the contract.

**Sec. 324-35. Request for Reconsideration and Appeal of Denial of Certification.**

- (a) *Noncompliance and Denial of Certification.* Upon a denial by the director of an application for certification or recertification as an MBE or WBE under this chapter, the director shall notify the affected party in writing by certified mail at the address provided

by the applicant on the application, setting forth the reasons for the denial of certification or recertification.

(b) *Request for Reconsideration.*

(1) Any applicant denied certification or recertification as an MBE or WBE or whose certification has been revoked may request the director to reconsider the denial or revocation by filing a written request for reconsideration with the director within fourteen days of the date the notice of denial or revocation decision is mailed, which request shall state with specificity the factual grounds supporting certification.

(A) In the event such notice sent by certified mail is returned as refused or unclaimed, the director shall send the notice via regular U.S. mail, postage pre-paid. Provided the notice sent by regular U.S. mail is not returned as undeliverable within ten days, the notice shall be presumed to have been delivered, and a written request for reconsideration must be filed with the director within ten days of the date the notice was mailed.

(B) The request for reconsideration may be accompanied by any supporting documents the applicant believes supports approval of the application or supports continued certification.

(2) Within thirty days of receipt of a request for reconsideration, the director must review the request and all relevant documents submitted in support thereof and render a written decision that states with specificity the reasons for the decision. The decision on reconsideration shall be sent by certified mail to the address provided by the applicant on the application.

(3) If, upon reconsideration, the director affirms the denial of certification or recertification or affirms the revocation of certification, the applicant may request a hearing before the certification appeals board by filing a written notice of appeal with the director within fourteen days of the date the notice of decision on reconsideration is mailed. In the event such notice sent by certified mail is returned as refused or unclaimed, the director shall send the notice via regular U.S. mail, postage pre-paid. Provided the notice sent by regular U.S. mail is not returned as undeliverable within ten days, the notice shall be presumed to have been delivered and a written request for hearing must be filed with the director within ten days of the date the notice was mailed.

(c) *Certification Appeals Board.* The city manager shall establish a certification appeals board for the purpose of reviewing and either affirming or overruling the director's disposition of an application for certification or recertification as an MBE or WBE or the director's revocation of MBE or WBE certification. The board shall be comprised of five members, one of whom shall be appointed by the mayor and four of whom shall be appointed by the city manager. The members must be knowledgeable about the city's procurement laws, rules and regulations, and procedures, including this chapter, and shall serve for a period of two years. A chairperson shall be elected by the members of the board. Included on the board shall be:

- (1) At least one member with demonstrated experience in the field of finance and accounting;
- (2) At least one member with demonstrated experience in the field of construction;
- (3) At least one member with demonstrated experience with MBE and WBE matters; and
- (4) At least one member with demonstrated legal experience with business associations and business structures.

(d) *Notice of Hearing Date and Hearing.*

- (1) Within three business days of receipt of a written notice of appeal, the director shall forward the notice to the certification appeals board.
- (2) The board shall set a hearing date not more than 28 days from the date of receipt of the notice of appeal forwarded by the director. The board shall cause notice of the hearing to be served upon all parties by certified mail. Such notice shall set forth the adverse determination by the director from which the appeal was taken and the errors identified by the applicant. The notice also shall state the date, time, and place of the hearing. If the certified mail notice is returned as refused or unclaimed, the notice of hearing shall be mailed by regular U.S. mail, postage pre-paid, and will be deemed to have been received if it is not returned as undeliverable within ten days of mailing.
- (3) All parties shall be provided a fair and impartial hearing and shall be allowed to produce any evidence that supports and substantiates the information submitted with the application for certification or recertification or the decision made by the director.

(e) *Decision.* Within seven days of the conclusion of the hearing, the board shall render its decision, which shall be to affirm, modify, or reverse the denial of certification or recertification or the revocation of certification by the director, and shall state the reason(s) for such decision. The board shall decide whether the director's determination was in accordance with the law. If the board finds for the applicant, the business shall be certified or recertified as an MBE or WBE and added to the appropriate certification list maintained by the department. The decision of the board shall be final, subject to the right of further appeal as may be provided by law.

**Sec. 324-37. Duties of the Department of Economic Inclusion.**

The department or, as applicable, the director shall have the following functions and duties associated with the programs set forth in this chapter:

- (a) Review and make determinations on applications for certification of MBEs and WBEs;
- (b) Maintain a directory of MBEs and WBEs certified under this chapter;
- (c) Provide information and needed assistance to MBEs and WBEs;

- (d) Investigate alleged violations of this chapter and, when appropriate, make written recommendations to the city manager for remedial action;
- (e) Develop and distribute all forms, applications, and documents necessary to comply with this chapter;
- (f) Maintain statistics on and regularly review the progress toward achieving the annual goals for the utilization of MBEs and WBEs;
- (g) Monitor contractors throughout the duration of their contracts to ensure that all efforts are made to comply with this chapter; and
- (h) Certify compliance with this chapter before contracts are submitted to the city manager for execution.

**Sec. 324-39. City Maintained Records and Reports.**

- (a) The effectiveness of this program will be measured by a review of data indicating prime and subcontract awards to city-certified MBEs and WBEs. Program effectiveness measurements also will include efforts by the city's contracting agencies to provide prime contracting opportunities for city-certified MBEs and WBEs. At the end of each contract, after receipt of the information required by subsection (b) of this section, the department will prepare a report on the utilization of firms in the MBE and WBE program. Data in this report will include information on the gross income size of the firms participating on each contract, the race and gender of each contractor and subcontractor performing work under the contract, and the total payments made to each contractor and subcontractor performing work under the contract.
- (b) At the end of a contract, the director shall require the prime contractor to report to the department the identity of each city-certified MBE and/or WBE to which the contractor awarded a subcontract for the purchase of construction services, professional services, other services, and supplies and the total payments made to each city-certified MBE and/or WBE.
- (c) The director shall prepare a quarterly consolidated report based on a compilation and analysis of the reports submitted by each project manager and procurement officer, information provided by the finance department, and the reports submitted by prime contractors. This record-keeping system will identify and assess MBE and WBE contract awards, prime contractors' progress in achieving MBE and WBE subcontract participation, and other MBE and WBE development and contracting efforts. Specifically, the department in conjunction with all city contracting agencies, will maintain records showing:
  - (1) Awards to MBEs and WBEs, including names of contractors and subcontractors, nature of the work and services performed, and the percentage of MBE and WBE participation per contract. The department will obtain regular reports from prime contractors on their progress in meeting contractual MBE and WBE commitments;
  - (2) Specific efforts to identify and award contracts to MBEs and WBEs;

- (3) Copies of direct mailings to MBEs and WBEs;
  - (4) Pre-bid conference information;
  - (5) Requests for assistance from the MBEs and WBEs interested in bidding or proposing on city contracts and subcontracts;
  - (6) Workshops, seminars, and training programs conducted for MBEs and WBEs;
  - (7) Efforts to assist MBEs and WBEs in acquiring bonding and insurance; and
  - (8) Contracts for which a waiver of MBE or WBE participation has been obtained.
- (d) The director will prepare quarterly MBE and WBE development reports for submission to council. These reports shall be disaggregated by minority group as defined in Section 324-1-M1 of this chapter and shall include:
- (1) The number of contracts awarded to MBEs and WBEs;
  - (2) A description of the general categories of contracts awarded to MBEs and WBEs;
  - (3) The dollar value of contracts awarded to MBEs and WBEs;
  - (4) The percentage of the dollar value of all contracts awarded to MBEs and WBEs during the preceding year;
  - (5) The actual dollar amount paid to MBE, WBE and non-M/WBE vendors as prime or subcontractors; and
  - (6) The percentage of the dollar amount paid to MBEs and WBEs compared to the total amount paid under the contracts.

**Sec. 324-41. MBE and WBE Resource Information.**

The department and purchasing division will make the following available to MBEs and WBEs upon request:

- (a) Procedures outlining specific steps on how to bid;
- (b) Prerequisites for bidding on contracts;
- (c) Information on how plans and specifications can be obtained;
- (d) Names of persons to contact concerning questions on bid documents;
- (e) Names of procurement officers and office hours;

- (f) Types of supplies and services purchased by the city; and
- (g) Explanations of standard contract implementation procedures and requirements concerning such matters as timely performance of work, contract changes, and payment schedules.

**Sec. 324-43. MBE and WBE Directory.**

The department will create a city-certified MBE and WBE directory that lists city-certified MBEs and WBEs categorized by certification type and the work for which the firms are certified to perform to facilitate identifying businesses with capabilities relevant to a particular specification. Each business listing will contain the business name, contact person, address, phone number, legal structure of the business, and details concerning the company's business specialty(ies). The directory will be continuously updated and maintained electronically. In compiling this directory, the city will identify and attempt to certify as many MBEs and WBEs as possible that have the potential of doing business with the city. The city will maintain and have available an updated MBE and WBE Directory for each bid/proposal solicitation to facilitate identifying city-certified MBEs and WBEs with capabilities relevant to general contracting requirements and to particular solicitations. The city will make the directory available to bidders and respondents in their efforts to meet the MBE and WBE commitments under this chapter.

**Sec. 324-45. MBE and WBE Assistance to Provide an Equitable Opportunity to Compete for Contracts and Subcontracts.**

The department and the procurement staff may utilize any of the same specific affirmative procedures set forth in section 323-33 of the Cincinnati Municipal Code or its successor for SBEs, SLBEs, and ELBEs to encourage maximum practicable opportunities for MBE and WBE participation in city contracts.

**Sec. 324-47. Enforcement.**

- (a) During the term of a contract subject to this chapter, the department must monitor continued compliance with the chapter, and the director may require contractors, bidders, respondents, MBEs, WBEs, and contracting agencies to submit any reports, documents, or other information reasonably necessary to determine compliance with this chapter.
- (b) If the director finds cause to believe that a contractor or subcontractor has failed to comply with any requirement of this chapter or with any contract provision relating to utilization of MBEs or WBEs, the director shall notify the contracting agency and the contractor of the noncompliance and shall attempt to resolve the noncompliance by agreement.
  - (1) If the noncompliance cannot be resolved, the director and the contracting agency must submit written findings and recommendations to the city manager.
  - (2) The city manager may impose penalties for noncompliance as provided in section 324-99 of this chapter.
- (c) If the director finds that a contracting agency has failed to comply with a provision of this chapter, the director shall send the contracting agency written findings that specify the nature

of the noncompliance and attempt to resolve the noncompliance through conciliation. If the noncompliance cannot be resolved, the director must submit written findings and recommendations for further action to the city manager.

**Sec. 324-49. Economic Inclusion Advocacy and Accountability Board.**

(a) *Mission, duties of Board.*

(1) The mission of the economic inclusion advocacy and accountability board shall be to promote economic inclusion, serve as a public advocate for the department, assist the department in fulfilling the recommendations of the economic inclusion advisory council and measure the impact of the economic inclusion programs and initiatives within the city of Cincinnati.

(2) The economic inclusion advocacy and accountability board shall have the following functions and duties associated with economic inclusion and the programs set forth in this chapter:

(A) Recommending policies to implement the city's economic inclusion programs and services;

(B) Recommending strategies to implement recommendations of the economic inclusion advisory council or its successor advisory group;

(C) Measuring the community impact of the city's and the department's economic inclusion programs and initiatives;

(D) Preparing and distributing to the community an annual report on the city's inclusion efforts; and

(E) Ensuring that minority- and women-owned business inclusion programs and initiatives continue in the future.

(b) *Board members; appointment.* The economic inclusion advocacy and accountability board shall consist of up to twenty-five members appointed by the mayor of the city of Cincinnati with the approval of city council. The following organizations each may recommend three members to the mayor: Urban League of Greater Southwestern Ohio, African American Chamber of Commerce, Hispanic Chamber of Commerce, and Asian Chamber of Commerce. The members shall be diverse in terms of race, ethnicity, gender, and age, shall have knowledge of minority-owned or women-owned business growth and development issues, and shall be residents of Hamilton County, Ohio.

(c) The director shall be an ex-officio board member and shall not count as one of the 25 appointed board members required in paragraph (b) of this section.

(d) *Term.* In the economic inclusion advocacy and accountability board's first year, up to eight members of the board shall be appointed for a term of one year, up to eight members shall be appointed for a term of two years, and up to nine members shall be appointed for a term of

three years. Upon the expiration of the initial term of each member, each member's appointment may be renewed for two additional three-year terms. The terms of the board members shall be staggered so that each year, up to eight or nine members will be eligible for either renewal of their terms or replacement by a new board member.

- (e) *Frequency of meetings.* The economic inclusion advocacy and accountability board shall meet on a quarterly basis, or more frequently as needed.
- (f) *By-laws.* The economic inclusion advocacy and accountability board is authorized to pass by-laws or other regulations governing the board as long as such by-laws or regulations do not conflict with any provision of this section 324-49.
- (g) *Committees.* The economic inclusion advocacy and accountability board, through its bylaws, shall establish a structure of standing committees with specific areas of responsibility for accomplishing its mission and duties.
- (h) *Severability.* The provisions of this section 324-49 are severable from the other provisions in this chapter. If any other provision is held invalid, this section 324-49 shall not be made invalid as well.
- (i) *Board to exist indefinitely.* The expiration of the provisions of this chapter shall not apply to the provisions of this section 324-49. This section 324-49 shall remain in effect indefinitely. It is the intent of this ordinance to create an economic inclusion advocacy and accountability board that shall continue in existence regardless of the status of the other provisions of this chapter.

**Sec. 324-99. Penalties.**

- (a) *Administrative Penalties.* A contractor, potential contractor, MBE, or WBE that fails to comply with any provision of this chapter is subject to any or all of the following administrative penalties:
  - (1) Suspension of contract until noncompliance is resolved;
  - (2) Withholding of funds;
  - (3) Rescission of contract based on material breach;
  - (4) Refusal to accept a bid or a response to an RFP or RFQ;
  - (5) Debarment from providing goods or services to the city for a period not to exceed two years; and
  - (6) Payment of liquidated damages.
- (b) *Prohibited conduct.* No person shall do any of the following:



- (1) Fraudulently obtain, retain, attempt to obtain or retain, or aid another person or entity in fraudulently obtaining, retaining, or attempting to obtain or retain certification as an MBE or WBE under this chapter;
  - (2) In any matter administered under this chapter, falsify, conceal or cover up, by a trick, scheme, or device, a material fact or make any false writing or document knowing it contains any false, fictitious, or fraudulent statement or entry;
  - (3) Willfully obstruct, impede, or attempt to obstruct or impede an authorized official or employee who is investigating the qualifications of a business enterprise that has requested certification as an MBE or WBE under this chapter;
  - (4) Fraudulently obtain, attempt to obtain, or aid another in fraudulently obtaining or attempting to obtain public money to which the person is not entitled under this chapter;  
or
  - (5) Make a false statement to any person or entity that another person or entity is not certified under this chapter.
- (c) Any person who violates any provision of subsection (b) of this section is guilty of a first-degree misdemeanor and on first conviction is subject to imprisonment for not more than six months, to a fine of not more than \$1,000, or to both imprisonment and fine.

Section 3. That it is hereby found and determined that any contracts awarded pursuant to or under the legal authority of the current Chapter 324, as ordained by Ordinance No. 308-2015, passed on September 30, 2015, as amended, (“Current Chapter 324”) shall not in any way be modified or impacted by the passage of this ordinance without regard to whether a contract has yet been reduced to writing and fully executed. It is further found and determined that any solicitations issued pursuant to or under the legal authority of the Current Chapter 324 shall not in any way be modified or impacted by the passage of this ordinance. Any such fully executed contracts shall continue in full force and effect, and any such solicitations shall proceed through review and evaluation, award recommendation, and contracting as appropriate in accordance with the provisions of the Current Chapter 324 as it applied to that contract, award, or solicitation, subject to any legal rights the City may have to terminate a contract or contract negotiations, to reject any

and all bids or responses, or to issue addenda for solicitations for which the time for submission of bids or responses has not yet closed.

Section 4. That, upon the effective date of this ordinance and expiration of the Current Chapter 324, firms with active certifications as MBEs or WBEs under the Current Chapter 324 and that remain eligible for certification under the reordained Chapter 324 automatically shall be certified under this ordinance without the need for immediate reapplication, provided that such automatic certification shall apply only to the certification, if any, for which the firm is eligible under the reordained Chapter 324. The initial term for certification under this ordinance shall be for only that time remaining between the date of the most recent certification under the Current Chapter 324 and the two-year anniversary of that certification date.

Section 5. That the members of the Certification Appeals Board and the members of the Economic Inclusion Advocacy and Accountability Board who were appointed during the effective period of the Current Chapter 324 and whose terms have not yet expired shall be entitled to serve out the remainder of their terms, unaffected by the repeal of Current Chapter 324. Those board members who are eligible for reappointment under Current Chapter 324 shall remain eligible for reappointment as otherwise provided under Current Chapter 324. For clarity, the reordained Chapter 324 shall not entitle any current board member to serve a longer term or to be eligible for additional reappointments beyond those permitted under Current Chapter 324.

Section 6. That the proper City officials are hereby authorized to do all things necessary to carry out the provisions of this ordinance.

Section 7. That reordained Chapter 324 shall be effective October 1, 2023.

Section 8. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms

of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to have a new Chapter 324 in effect immediately upon the expiration of the Current Chapter 324.

Passed: \_\_\_\_\_, 2023

\_\_\_\_\_  
Aftab Pureval, Mayor

Attest: \_\_\_\_\_  
Clerk

# CITY OF CINCINNATI, OHIO

## DISPARITY STUDY



## FINDINGS & RECOMMENDATIONS

## PRESENTATION

**235 PEACHTREE STREET, NE SUITE 400  
ATLANTA, GA 30303  
PHONE: (404) 584-9777  
FAX: (404) 584-9730**



# STUDY PARAMETERS

**Study Period:**

**CY2016-CY2020**

**Industry Categories:**

Construction  
Architecture & Engineering (A&E)  
Professional Services  
Other Services  
Goods

**Relevant Geographic Market Area:**

**Hamilton County, Ohio**

Construction:	81.41%
Architectural & Engineering:	80.87%
Professional Services:	84.31%
Other Services:	81.79%
Goods:	59.90%
Total	76.03%

# Availability by Industry Category (in the Relevant Geographic Market)

## Cincinnati Disparity Study

### Availability of Firms by Business Ownership in Market Area

#### (Using Master Vendor File)

Business Ownership Classification	Construction	A&E	Professional Services	Other Services	Goods and Services
African American	12.48%	7.69%	12.37%	10.45%	5.05%
Asian American	0.65%	3.55%	1.03%	0.72%	0.27%
Hispanic American	0.65%	2.37%	0.26%	0.32%	0.13%
Native American	0.13%	0.00%	0.00%	0.08%	0.00%
TOTAL MBE	13.91%	13.61%	13.66%	11.58%	5.44%
Non-Minority Woman	6.76%	10.65%	6.44%	3.54%	4.52%
TOTAL M/WBE	20.68%	24.26%	20.10%	15.11%	9.96%
NON-M/WDBE	79.32%	75.74%	79.90%	84.89%	90.04%
TOTAL FIRMS	100.00%	100.00%	100.00%	100.00%	100.00%

# Prime Utilization (Payments) by Industry Category (in the Relevant Geographic Market)

Business Ownership Classification	Construction	A&E	Professional Services	Other Services	Goods	TOTAL
	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)
African American	\$ 5,861,003	\$ 73,488	\$ 5,604,981	\$ 6,401,643	\$ 8,332,710	\$ 26,273,825
Asian American	\$ -	\$ 1,797,534	\$ -	\$ 3,110	\$ -	\$ 1,800,644
Hispanic American	\$ -	\$ 213,581	\$ -	\$ -	\$ 1,732	\$ 215,313
Native American	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>TOTAL MINORITY</b>	<b>\$ 5,861,003</b>	<b>\$ 2,084,603</b>	<b>\$ 5,604,981</b>	<b>\$ 6,404,753</b>	<b>\$ 8,334,442</b>	<b>\$ 28,289,782</b>
Non-Minority Woman	\$ 3,955,594	\$ 133,547	\$ 1,097,765	\$ 5,802,602	\$ 1,399,692	\$ 12,389,201
<b>TOTAL M/WBE</b>	<b>\$ 9,816,597</b>	<b>\$ 2,218,150</b>	<b>\$ 6,702,747</b>	<b>\$ 12,207,355</b>	<b>\$ 9,734,134</b>	<b>\$ 40,678,983</b>
NON-M/WBE	\$357,620,015	\$13,369,777	\$51,988,656	\$200,289,650	\$160,667,282	\$ 783,935,381
<b>TOTAL FIRMS</b>	<b>\$367,436,612</b>	<b>\$15,587,927</b>	<b>\$58,691,403</b>	<b>\$212,497,005</b>	<b>\$170,401,416</b>	<b>\$ 824,614,364</b>
Business Ownership Classification	Construction	A&E	Professional Services	Other Services	Goods	TOTAL
	(%)	(%)	(%)	(%)	(%)	(%)
African American	1.60%	0.47%	9.55%	3.01%	4.89%	3.19%
Asian American	0.00%	11.53%	0.00%	0.00%	0.00%	0.22%
Hispanic American	0.00%	1.37%	0.00%	0.00%	0.00%	0.03%
Native American	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
<b>TOTAL MINORITY</b>	<b>1.60%</b>	<b>13.37%</b>	<b>9.55%</b>	<b>3.01%</b>	<b>4.89%</b>	<b>3.43%</b>
Non-Minority Woman	1.08%	0.86%	1.87%	2.73%	0.82%	1.50%
<b>TOTAL M/WBE</b>	<b>2.67%</b>	<b>14.23%</b>	<b>11.42%</b>	<b>5.74%</b>	<b>5.71%</b>	<b>4.93%</b>
NON-M/WBE	97.33%	85.77%	88.58%	94.26%	94.29%	95.07%
<b>TOTAL FIRMS</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

# Total Utilization (Prime + Sub) by Industry Category (in the Relevant Geographic Market)

Business Ownership Classification	Construction	A&E
	(\$)	(\$)
African American	\$ 36,342,775	\$ 73,488
Asian American	\$ 8,737,800	\$ 1,797,534
Hispanic American	\$ -	\$ 213,581
Native American	\$ -	\$ -
<b>TOTAL MINORITY</b>	<b>\$ 45,080,575</b>	<b>\$ 2,084,603</b>
Non-Minority Woman	\$ 19,190,255	\$ 133,547
<b>TOTAL M/WBE</b>	<b>\$ 64,270,830</b>	<b>\$ 2,218,150</b>
NON-M/WBE	\$ 303,165,783	\$ 13,369,777
<b>TOTAL FIRMS</b>	<b>\$ 367,436,612</b>	<b>\$ 15,587,927</b>
Business Ownership Classification	Construction	A&E
	(%)	(%)
African American	9.89%	0.47%
Asian American	2.38%	11.53%
Hispanic American	0.00%	1.37%
Native American	0.00%	0.00%
<b>TOTAL MINORITY</b>	<b>12.27%</b>	<b>13.37%</b>
Non-Minority Woman	5.22%	0.86%
<b>TOTAL M/WBE</b>	<b>17.49%</b>	<b>14.23%</b>
NON-M/WBE	82.51%	85.77%
<b>TOTAL FIRMS</b>	<b>100.00%</b>	<b>100.00%</b>



# Comparison with 2015 Study

- 2015 Study: 3 procurement categories
- Current Study: 5 procurement categories

Most significant difference:

- 2015 Study: Construction MWBE Subcontractor \$12,260,946
- Current Study: Construction MWBE Subcontractors \$55,245,285

# MWBE PRIME DISPARITIES

*Summary of Statistically Significant Prime Underutilization of MWBEs  
City of Cincinnati Disparity Study*

Firm Ownership	Construction	A&E	Professional Services	Other Services	Goods
African American	X	X	X	X	*
Asian American	X		X	X	**
Hispanic American	X	X	X	X	**
Native American	**	**	**	**	**
Non-Minority Woman	X	X	X	X	X
Note: * Disparity but not statistically significant.					
** Small number of businesses in both Prime and Availability data to conduct statistical analysis.					

# MWBE TOTAL UTILIZATION DISPARITIES

*Summary of Statistically Significant Total Utilization  
Underutilization of MWBEs  
City of Cincinnati Disparity Study*

Firm Ownership	Construction	A&E
African American	X	X
Asian American		
Hispanic American	X	X
Native American	**	**
Non-Minority Woman	X	X
Note: * Disparity but not statistically significant.		
** Small number of businesses in both Prime and Availability data to conduct statistical analysis.		

# PRIME DISPARITIES CONTROLLING FOR CONTRACT SIZE

For contracts under \$500K and \$1 million, all MWBEs were underutilized for all categories with the exception of:

- Asian Americans in A&E
- Non-Minority Women in Other Services.

# OVERALL FINDINGS

A regression analysis found that disparities by race, ethnicity, or gender status of the firm owners remained after controlling for capacity and other race and gender-neutral factors.

GSPC found that City of Cincinnati should continue its race and gender-neutral programs and that there is a factual predicate for race and gender conscious efforts.

# COMMENDATIONS

SLBE and ELBE Programs including Sheltered Market

MWBE Goals Program

Exemplary MWBE Subcontractor Payment Tracking

Bond Waivers

Forecasting

Prompt Pay Provisions

Business Resource Guide

# RECOMMENDATIONS

**Recommendation 1: Allocating Resources and Staffing**

**Recommendation 2: Set Annual Aspirational MBE and WBE Goals Based Upon Availability**

**Recommendation 3: Continue to set MBE and WBE contract-by-contract goals adding additional ethnicities based on the Study findings with robust Good Faith Efforts.**

# RECOMMENDATIONS

**Recommendation 4: Require joint ventures for large construction contracts.**

**Recommendation 5: Initiate a campaign to increase certification of firms in all ethnicities. Increase certification period from 2 years to 4 years and broaden reciprocity of accepted certifications.**

**Recommendation 6: Institute measures to track invoices to better enforce prompt pay measures**



# RECOMMENDATIONS

**Recommendation 7: Set more definitive parameters for the Small Business Sheltered Market**

**Recommendation 8: Continue Targeted Outreach, Supportive Services, and Forecasting**

**Recommendation 9: Review Bonding and Insurance**

# RECOMMENDATIONS

## Recommendation 10: Data Reform:

\*Currently the City only collects subcontractor payment data on contracts that have MWBE or SBE goals. GSPC recommends that the City track all subcontracts; both the award amount (promised amount) and the payment amount.

\*The City should include Purchase Order/Contract Number in the City Financial System payment data.

\*The City should consider including NIGP/NAICS codes to all procurement activities.

\*The City should require all bidders and other respondents (including those submitting informal quotes) to register as vendors.

# NEXT STEPS

1. **Accepting the Study and its Recommendations;**
2. **Conducting a Gap Analysis (What needs new legislation and what can be implemented under current authority?);**
3. **Plan for Implementation (Steps, Phases, and Tasks);**
4. **Draft New Program Plan;**
5. **Determine Budget and Staffing Needs for New Program Elements; and**
6. **Develop a Training Protocol and Train Staff.**

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[Www.gspclaw.com](http://www.gspclaw.com)

# Q&A



# Next Steps: DEI

- New program will go into effect October 1<sup>st</sup>
- DEI is working with B2G Now on administrative changes based on DS findings.
- DEI will no longer offer MWBE certification
- Letters will be sent to all business owners affected by the changes.
- DEI is exploring partnerships to create a pipeline for firms who no longer qualify for WBE certification with the City.
- DEI business development events are open to the public effective immediately.
- Exploring pilot programs based on additional recommendations.